

(Updated with Finance Act, 2023 Amendments)

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Preface

Tax laws serve as crucial instruments in tax administration, yet a recurring challenge for tax officials involves the scarcity and exorbitant costs of comprehensive volumes consolidating all tax laws. In addressing this predicament, we have assembled an updated E-Compendium of Tax laws with updated Finance Act 2023.

The impetus behind this compilation stems from the consistent complaints voiced by tax administrators, who found themselves expanding considerable time on daily referencing of tax laws due to non-availability of a consolidated E- version. This approach not only ensures a streamlined and efficient referencing process but also establishes a compact and easily navigable resource guide, effectively addressing the challenges articulated by tax administrators in the execution of their duties.

This compilation distinguishes itself by adopting an E- format, addressing the cumbersome nature of hard copy volumes. Notably, it is updated with the latest amendments, including those introduced by the Finance Act, 2023, allowing users to access laws effortlessly through the Table of Contents.

This e-book is explicitly not for sale. Its primary objective is to facilitate the work of tax officials by providing unrestricted access and contribute to the efficiency of tax administration. we believe that professionals, students, consultants and stakeholders within the Nigerian tax system will also find value in this compilation.

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SCHEDULE

Provisions of the Income Tax Acts applied to Capital Gains Tax

CHAPTER C1

CAPITAL GAINS TAX ACT

An Act to provide for the taxation of capital gains accruing on disposal of assets.

[1967 No. 44.]

[Commencement. [1st April, 1967]

CAPITAL GAINS TAX

General

1. Taxation of capital gains

- (1) Subject to the provisions of this Act there shall be charged a tax to be called capital gains tax for the year of assessment 1967-68 and for subsequent years of assessment in respect of any capital gains, that is to say, gains accruing to any person on or after 1 April, 1967, on a disposal of assets.
- (2) Every such gain shall, except so far as otherwise expressly provided, be a chargeable gain.
- (3) In this Act, unless the context otherwise requires, any reference to a person shall include a reference to any person to whom section 2 of the Personal Income Tax Act applies.

[Cap. P8.]

2. Capital gains tax

- (1) The rate of capital gains tax shall be ten per cent.
- (2) Capital gains tax shall be chargeable at the rate mentioned in subsection (1) of this section on the total amount of chargeable gains accruing to any person in a year of assessment after making such deductions as may be allowed under this Act in the computation of such gains.
- (3) Capital gains tax to be assessed on any person under this Act shall be computed and charged in accordance with the provisions of this Act.

[1999 No. 45.]

- (4) Subject to the provisions of section 31 of this Act, every person having disposed a chargeable asset shall, not later than 30 June and 31 December of that year, compute the capital gains tax, file self-assessment return, and pay the tax computed in respect of the chargeable assets disposed in the periods.

[2020 No. 1, s. 2]

3. Chargeable assets

Subject to any exceptions provided by this Act, all forms of property shall be assets for the purposes of this Act, whether situated in Nigeria or not, including-

- (a) options, debts, digital assets and incorporeal property generally;
[2023 No. 1, s. 2]
- (b) any currency other than Nigerian currency; and
- (c) any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired,

without prejudice to the foregoing provisions, this section shall have effect, notwithstanding that the property is an asset in respect of which qualifying expenditure had been incurred under the Schedule to the Personal Income Tax Act, the Third Schedule to the Companies Income Tax Act or the Petroleum Profits Tax Act.

[Cap. P8. Cap. C21. Cap. P13.]

4. Assets situated outside Nigeria

Without prejudice to the foregoing provisions of this Act, as respects any chargeable gains accruing in the year 1967-68 or a later year of assessment from a disposal of assets situated outside Nigeria-

- (a) where the disposal of assets is by an individual-
 - (i) who is in Nigeria for some temporary purpose only and not with any view or intent to establish his residence in Nigeria; and
 - (ii) if the period or sum of the periods for which he is present in Nigeria in that year of assessment exceeds 182 days; or
- (b) where the disposal is by any trustee of any trust or settlement and the seat of administration of the trust or settlement is situated outside Nigeria during the whole of that year of assessment; or
- (c) where the disposal is by a company, which is not a Nigerian company within the meaning of section 105 of the Companies Income Tax Act, that is to say, a company whose activities are managed and controlled outside Nigeria during the whole of that year of assessment,

[Cap. C21.]

capital gains tax shall be charged on the amounts (if any) received or brought into Nigeria in respect of any chargeable gains, such amounts being treated as gains accruing when they are received or brought into Nigeria.

5. Exclusion of losses

- (1) In the computation of chargeable gains under this Act the amount of any loss which accrues to a person on the disposal of any asset shall not be deductible from gains accruing to any person disposing that asset, provided that such loss shall only be deductible against the same type of asset.
- (2) Where the aggregate capital loss by any taxable person in a tax year exceeds the aggregate chargeable gains, such loss may be carried forward for deduction from chargeable gains arising from disposal of the same type of asset in the following year and so on, provided that such losses shall only be carried forward for a maximum of five years immediately succeeding the year in which the loss was incurred.

[2023 No. 1, s.3]

Gains chargeable to tax

6. Disposal of assets

- (1) Subject to any exceptions provided by this Act there is, for the purposes of this Act, a disposal of assets by a person where any capital sum is derived from a sale, lease, transfer, an assignment, a compulsory acquisition or any other disposition of assets, notwithstanding that no asset is acquired by the person paying the capital sum, and in particular-
 - (a) where any capital sum is derived by way of compensation for any loss of office or employment;
 - (b) where any capital sum is received under a policy of insurance and the risk of any kind of damage or injury to, or the loss or depreciation of, assets;
 - (c) where any capital sum is received in return for forfeiture or surrender of rights, or for refraining from exercising rights;
 - (d) where any capital sum is received as consideration for use of exploitation of any asset; and
 - (e) without prejudice to paragraph (a) of this section, where any capital sum is received in connection with or arises by virtue of any trade, business, profession or vocation.
- (2) In this section and elsewhere in this Act-
 - (a) “**capital sum**” means any money or money’s worth which is not excluded from the consideration taken into account in the computation under section 11 of this Act; and
 - (b) references to a disposal of assets include, except where the context otherwise requires, references to a part disposal of assets, and there is a part disposal of assets
 - (i) where an interest or right in or over the assets is created by the disposal, as well as

where it subsists before the disposal; and
where, on a person making a disposal, any description of property derived from the assets remains undisposed of.

7. Disposal of assets; provisions as to considerations

- (1) Subject to the provisions of this Act, a person's acquisition of an asset and the disposal of it to him shall, for the purposes of this Act, be deemed to be for a consideration equal to the market value of the asset-
 - (a) where he acquires the asset otherwise than by way of a bargain made at arm's length; or
 - (b) where he acquires the asset wholly or partly for a consideration that cannot be valued, or in connection with his own or another's loss of office or employment or diminution of emolument, or otherwise in consideration for or recognition of his or another's services or past services in any office or employment or of any other service rendered or to be rendered by him or another; or
 - (c) where he acquires the asset as trustee for creditors of the person making the disposal.
- (2) Where a person disposes by way of a gift of an asset acquired by him by way of a gift or otherwise (not being an acquisition on a devolution on death) the person acquiring the asset on that disposal shall, for all purposes of this Act, so far as relates to the interest taken by him, be deemed to have acquired the asset-
 - (a) in a case where the amount of the consideration for which the asset was last disposed of by way of a bargain made at arm's length is ascertainable, for a consideration equal to that amount; and
 - (b) in any other case, for a consideration equal to the market value of the asset on the date of that disposal,and in this subsection "gift" does not include a *donatio mortis causa*.
- (3) In relation to any asset held by a person as nominee for another person, or as trustee for another person absolutely entitled as against the trustee, or for any person who would be so entitled but for being an infant or other person under disability (or for two or more persons who are or would be jointly so entitled), this Act shall apply as if the property were vested in, and the acts of the nominee or trustee in relation to the asset were the acts of, the person or persons for whom he is the nominee or trustee (acquisitions from or disposals to him by that person or persons being disregarded accordingly).
- (4) The conveyance or transfer by way of security of an asset or of an interest or right in or over it, or transfer of a subsisting interest or right by way of security in or over an asset (including a re-transfer on redemption of the security), shall not be treated for the purposes of this Act as involving any acquisition or disposal of the asset.
- (5) Where a person entitled to an asset by way of security or to the benefit of a charge or

incumbrance on an asset deals with the asset for the purpose of enforcing or giving effect to the security, charge or incumbrance his dealings with it shall be treated for the purpose of this Act as if they were done through him as nominee by the person entitled to it subject to the security, charge or incumbrance; and this subsection shall apply to the dealings of any person appointed to enforce or give effect to the security, charge or incumbrance as receiver and manager or judicial factor as it applies to the dealings of the person entitled as aforesaid.

- (6) An asset shall be treated as having been acquired free of any interest or right by way of security subsisting at the time of any acquisition of it, and as being disposed of free of any such interest or right subsisting at the time of the disposal; and where an asset is acquired subject to any such interest or right the full amount of the liability thereby assumed by the person acquiring the asset shall form part of the consideration for the acquisition and disposal in addition to any other consideration.
- (7) Where an asset is acquired by a creditor in satisfaction of his debt or part thereof, the asset shall not be treated as disposed of by the debtor or acquired by the creditor for a consideration greater than its market value at the time of the creditor's acquisition of it, and if a chargeable gain accrues to the creditor on a disposal by him of the asset the amount of the chargeable gain (where necessary) shall be reduced so as not to exceed the chargeable gain which would have accrued if he had acquired the property for a consideration equal to the amount of the debt or that part thereof.

8. Death

- (1) On the death of an individual any assets of which he was competent to dispose of shall for the purposes of this Act be deemed to be disposed of by him at the date of his death and acquired by the personal representatives or other person on whom the assets devolve for a consideration equal to-
 - (a) in a case where the amount of the consideration for which the asset was last disposed of by way of a bargain made at arm's length is ascertainable, that amount; and
 - (b) in any other case, the market value of the asset at that date.
- (2) The gains which accrue in consequence of subsection (1) of this section shall not be chargeable to capital gains tax under this Act.
- (3) In relation to property forming part of the estate of a deceased person, the personal representatives shall for the purposes of this Act be treated as being a single and, continuous body of persons (distinct from the persons who may from time to time be the personal representatives), and that body shall be treated as having the deceased's residence and domicile at the date of death.
- (4) On a person acquiring any asset as legatee-
 - (a) no chargeable gain shall accrue to the personal representatives; and
 - (b) the legatee shall be treated as if the personal representatives' acquisition of the asset had been his acquisition of it.

- (5) In this section, references to assets of which a deceased person was competent to dispose of, are references to assets of the deceased which (otherwise than in right of a power of appointment) he could, if of full age and capacity, have disposed of by his will assuming that all the assets were situated in Nigeria and, if he was not domiciled in Nigeria, that he was domiciled in Nigeria.
- (6) If not more than two years after a death any of the dispositions of the property of which the deceased was competent to dispose of whether by will, or under the law relating to intestacies, or otherwise, are varied by deed of family arrangement or similar instrument, this section shall apply as if the variations made by the deed or other instrument were effected by the deceased, and no disposition made by the deed or other instrument shall constitute a disposition for the purposes of this Act.
- (7) In this section

“**legatee**” includes any person taking under a testamentary disposition or on an intestacy or partial intestacy, whether he takes beneficially or as trustee, and a *donatio mortis causa* shall be treated as a testamentary disposition and not as a gift;

“**personal representatives**” means-

- (a) the executor, original or by representation or administrator for the time being of a deceased person under any law in force in Nigeria;
- (b) persons having in relation to the deceased under the law of another country any functions corresponding to the functions for administration purposes under any law in force in Nigeria or personal representatives as defined under paragraph (a) of this subsection,

and references to personal representatives as such shall be construed as references to the personal representatives in their capacity as having such functions as aforesaid.

9. Compulsory acquisition of land

- (1) A person shall not be chargeable to tax under this Act in respect of any acquisition and the disposal of land by reference to a disposal to an authority exercising or having compulsory powers, if that person had not-
- (a) acquired the land at a time when he knew or might reasonably have known that it was likely to be acquired by the authority; or
 - (b) taken any steps by advertisement or otherwise to dispose of the land or to make his willingness to dispose of it known to the authority or others.
- (2) In this section “**authority exercising or having compulsory powers**” means, in relation to any disposal of land, an authority, a person or body of persons acquiring the land compulsorily under the Land Use Act, or any other enactment or law of a country other than

Nigeria, or who has or have been, or could be, authorised to acquire it compulsorily for the purposes for which it is acquired, or for whom another authority, person or body of persons has or have been, or could be, authorised so to acquire it.

[Cap. L5.]

10. Date of acquisition or disposal, etc.

For the purposes of this Act, any asset acquired or disposed of by any person chargeable to capital gains tax shall subject to section 23 (4) of this Act, be deemed to have been so acquired or disposed of at the date at which there is an enforceable right to acquire or a binding duty to dispose of the asset or any right or interest therein, and in particular-

- (a) where any contract is to be performed subject to any condition the date of acquisition or disposal of the asset shall be deemed to be the date when the condition is satisfied, but where a consideration of such a contract does not depend solely or mainly on the value of the asset at the time the condition is satisfied, the acquisition or disposal shall be treated as if the contract had never been conditional, in which case the date of the acquisition or disposal of the asset shall be the date of the contract;
- (b) where an option is conferred by virtue of any contract, the date of the acquisition or disposal of the asset shall be the date when the option is exercised.

CAPITAL GAINS

Computation

11. Computation of capital gains

In the computation of any chargeable gains under this Act, such gains as may be chargeable to tax shall, subject to the provisions of this Act, be the difference between the consideration accruing to any person on a disposal of assets and any sum to be excluded from that consideration, and there shall be added to that sum the amount of the value of any expenditure allowable to such person on such disposal by virtue of this Act.

12. Exclusion from consideration for disposals of sums chargeable to income tax

- (1) There shall be excluded from the consideration for a disposal of assets taken into account in the computation of the gain accruing on that disposal any money or money's worth charged to income tax as income of, or taken into account as a receipt in computing income or profits or gains or losses of the person making the disposal for the purposes of the Personal Income Tax Act, the Companies Income Tax Act or the Petroleum Profits Tax Act, which Acts are hereafter jointly referred to as "the Income Tax Acts". [Cap. P8. Cap. C21. Cap. P13.]
- (2) Subsection (1) above shall not be taken as excluding from the consideration for the disposal of an asset any money or money's worth which is taken into account in the making of a

balancing charge under the Income Tax Acts.

13. General provision as to allowable expenditure

- (1) In the computation of capital gains the sums allowable as a deduction from the consideration accruing to a person on the disposal of an asset shall be restricted to-
 - (a) the amount or value of the consideration, in money or money's worth given by him or on his behalf wholly, exclusively and necessarily for the acquisition of the asset, together with the incidental costs to him of the acquisition or, if the asset was not acquired by him, any expenditure wholly, exclusively and necessarily incurred by him in providing the asset;
 - (b) any amount of an expenditure wholly, exclusively and necessarily incurred on the asset by him or on his behalf for the purposes of enhancing the value of the asset being expenditure reflected in the state or nature of the asset at the time of the disposal;
 - (c) the amount of any expenditure wholly, exclusively and necessarily incurred on the asset by him or on his behalf in establishing, preserving or defending his title to, or a right over, the asset; and
 - (d) the incidental costs to him of making the disposal.
- (2) For the purposes of this section and any other provision of this Act, the incidental costs to the person making the disposal of the acquisition of the asset or of its disposal shall consist of expenditure wholly, exclusively and necessarily incurred by him for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor or valuer, or auctioneer, or accountant, or agent, or legal adviser and costs of transfer or conveyance (including stamp duties) together-
 - (a) in the case of the acquisition of an asset, with costs of advertising to find a seller; and
 - (b) in the case of a disposal, with costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation of the capital gains, including in particular, expenses reasonably incurred in ascertaining market value where required under this Act.

14. Exclusion of expenditure deductible for income tax purposes

- (1) There shall be excluded from the sum allowable under section 13 of this Act as a deduction in the computation under this Act any expenditure allowable as a deduction in computing the profits or gains or losses of a trade, business, profession or vocation for the purposes of income tax or allowable as a deduction in computing any other income or profits or gains or losses for the purposes of the income or profits or gains or losses for the purposes of the Income Tax Acts and any expenditure which, although not so allowable as a deduction in computing any losses, would be so allowable but for an insufficiency of income or profits or

gains: and this section applies irrespective of whether effect is or would be given to the deduction in computing the amount of tax chargeable or by discharge of payment of tax or in any other way.

- (2) Without prejudice to the provisions of subsection (1) of this section, there shall be excluded from the sums allowable under section 13 of this Act as a deduction in the computation under this Act any expenditure which, if the assets, or all the assets to which the, computation relates, were, and had at all times been, held or used as part of the fixed capital of a trade or business the profits or gains of which were (irrespective of whether the person making the disposal is a company or not) chargeable to income tax would be allowable as a deduction in computing the profits or gains or losses of the trade for the purposes of income tax.
- (3) The foregoing provisions of this section shall not require the exclusion from the sums allowable as a deduction in the computation under this Act of any expenditure as being expenditure in respect of which capital allowances are granted under the Income Tax Acts.

15.Special provisions as to deductions allowable: insurance premiums

Without prejudice to section 13 of this Act, there shall be excluded from the sums allowable as a deduction in the computation under this Act of the gain accruing to a person, on the disposal of an asset, any premiums or other payments made under a policy of insurance against the risks of any kind of damage or injury to, loss or depreciation of, any asset.

COMPUTATION

Miscellaneous

16.Part disposal

- (1) Where there is a part disposal of asset within the meaning of section 6 (2) of this Act and generally wherever on the disposal of an asset any description of property derived from that asset remains undisposed of, the sums representing the amount or value of the consideration for the acquisition of the asset (in this Act referred to as the cost of acquisition of the asset) together with any amount of expenditure wholly, exclusively and necessarily incurred on the asset for the purposes of enhancing the value of the asset as are attributable to the asset shall, both for the purposes of the computation under this Act and in relation to the property which remains undisposed of, be apportioned.
- (2) Apportionment shall be made by reference-
 - (a) to the amount or value of the consideration for the disposal on the one hand (call that amount or value A), and
 - (b) to the market value of the property which remains undisposed of on the other hand (call that market value B),

and accordingly, the fraction of the said cost or sums allowable as a deduction in computing under this Act the amount of the gain accruing on the disposal shall be $A/(A+B)$ and the remainder shall be attributed to the property which remains undisposed of.

- (3) Where there is a disposal of an interest or right in or over a chargeable asset created by the disposal or where it subsists before the disposal, and on the making of the disposal any description of property derived from the asset remains undisposed of, there shall be apportioned the amount or value of the consideration in money or money's worth given by him or on his behalf wholly and exclusively for the acquisition of the asset together with the incidental cost to him of the acquisition or any expenditure wholly or exclusively incurred by him in providing the asset as against the market value of the property.

17. Consideration due after time of disposal

- (1) If the consideration or part of a consideration, taken into account in the computation of capital gains under this Act, is payable by instalments over a period beginning not earlier than the time when the disposal is made, being a period exceeding 18 months, the chargeable gain accruing on the disposal shall be regarded for all the purposes of this Act as accruing in proportionate parts in the year of assessment in which the disposal is made and in each of the subsequent years of assessment down to and including the year of assessment in which the last instalment is payable.
- (2) The proportionate parts to be recorded as accruing in the respective years of assessment shall correspond to the proportions of the amounts of the instalments of consideration payable in those respective years of assessment.
- (3) The time in the year or accounting period when any such part of a chargeable gain is deemed to accrue under this section shall be the last day in that year of assessment.
- (4) Subsection (1) of this section shall not apply to any part of the consideration which has effectively passed to the person making the disposal by way of a loan made to that person by the other party to the transaction.
- (5) In the computation of chargeable gains under this Act consideration for the disposal shall be brought into account without any discount for postponement of the right to receive any part of it and, in the first instance, without regard to a risk of any part of the consideration being irrecoverable, or to the right to receive any part of the consideration being contingent; and if any part of the consideration so brought into account is subsequently shown to the satisfaction of the Service to be irrecoverable, such adjustment, whether by way of discharge, or repayment of tax or otherwise, shall be made as is required in consequence.

18. Assets lost or destroyed

- (1) If an asset, whether under a policy of insurance or otherwise, is lost or destroyed, and a capital sum received by way of compensation for the loss or destruction is applied within three years of receipt in acquiring another asset in replacement of the asset lost or destroyed,

the owner shall if he so claims be treated for the purposes of this Act-

- (a) as if the consideration for the disposal of the old asset were (if otherwise of a greater amount) of such amount as would secure that on the disposal neither a loss nor a gain accrues to him; and
 - (b) as if the amount of the consideration for the acquisition of the new asset were reduced by the excess of the amount of the capital sum received by way of compensation or under the policy of insurance, together with any residual or scrap value, over the amount of the consideration which he is treated as receiving under paragraph (a) of this subsection.
- (2) A claim shall not be made under subsection (1) of this section if part only of the capital sum is applied in acquiring the new asset but if all of that capital sum except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of the old asset is so applied, then the owner shall if he so claims be treated for the purposes of this Act-
- (a) as if the amount of the gain so accruing were reduced to the amount of the said part (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain); and
 - (b) as if the amount of the consideration for the acquisition of the new asset were reduced by the amount by which the gain is reduced under paragraph (a) of this subsection.

19. Bargains comprising two or more transactions

- (1) Where a single bargain comprises two or more transactions whereby assets are disposed of, those transactions shall be treated for the purposes of computing capital gains as a single disposal.
- (2) Where separate considerations are agreed or purported to be agreed for any two or more transactions comprised in one bargain (whether transactions whereby assets are disposed of or not) those considerations shall be treated as altogether constituting an entire consideration for the transactions and shall be apportionable between them accordingly.
- (3) Where any apportionment under this section shall result in lesser consideration than that agreed (or purported to be agreed) in the bargain being attributable to the disposal of the assets, the separate considerations agreed (or purported to be agreed) in respect of those assets shall be deemed to be the consideration for which those assets are disposed of.

20. Artificial or fictitious transactions

- (1) Subject to the provisions of this Act, where the Service is of the opinion that any disposition is an artificial or fictitious transaction or where any transaction which reduces or would reduce the amount of any capital gains tax is artificial or fictitious the Service shall disregard such disposition and may direct that such adjustments shall be made with respect to the

liability of any person for the payment of capital gains tax as it considers appropriate so as to counteract the reduction of liability to capital gains tax effected or reduction which would otherwise be effected, by the transaction and any person concerned with such transaction shall be assessable accordingly.

- (2) Any person in respect of whom any direction is made under this section shall have a right of appeal in like manner as though for the purposes of this Act such direction were an assessment to capital gains tax.
- (3) For the purposes of this section-
 - (a) **“disposition”** includes any trust, grant, covenant, agreement or arrangement;
 - (b) transactions between connected persons (within the meaning of section 23 of this section) shall be deemed to be artificial or fictitious if in the opinion of the Service those transactions have not been made on terms which might fairly have been expected to have been made by persons engaged in the same or similar activities dealing with one another at arm’s length; and
 - (c) in relation to any direction made under this section the provision of this Act as to appeals against an assessment shall have effect as if such direction were an assessment.

21. Valuation: market value

- (1) For the purposes of computing capital gains, unless the context otherwise requires, **“market value”** in relation to any assets (whether chargeable assets or not) means the prices which those assets might reasonably be expected to fetch on a sale in the open market.
- (2) In estimating the market value of any asset, no reduction shall be made in the estimate on account of the estimate being made on the assumption that the whole of the assets is to be placed on the market at one and the same time.
- (3) In re-estimating the market value of any assets acquired, if the market value exceeds the consideration actually paid by the acquirer, the assets shall be deemed to have been acquired for the amount actually paid by the acquirer.

22. Transactions between connected persons

- (1) This section shall apply where a person acquires an asset and the person making the disposal is connected with him.
- (2) Without prejudice to the generality of section 7 of this Act the person acquiring the asset and the person making the disposal shall be treated as parties to a transaction otherwise than by way of a bargain made at arm's length.
- (3) In a case where any asset mentioned in subsection (1) of this section is subject to any right

or restriction enforceable by the person making the disposal, or by a person connected with him, then (the amount of the consideration for the acquisition being, in accordance with subsection (2) of this section, deemed to be equal to the market value of the asset) that market value shall be-

- (a) what its market value would be if not subject to the right or restriction, minus
- (b) the market value of the right or restriction or the amount by which its extinction would enhance the value of the asset to its owner, whichever is the less:

Provided that if the right or restriction is of such a nature that its enforcement would or might effectively destroy or substantially impair the value of the asset without bringing any countervailing advantage either to the person making the disposal or a person connected with him or other right to acquire the asset or, in the case of immovable property, is a right to extinguish the asset in the hands of the person giving the consideration by forfeiture or merger or otherwise, that market value of the asset shall be determined, and the amount of the gain accruing on the disposal shall be computed, as if the right or restriction did not exist.

This subsection shall not apply to a right of forfeiture or other right exercisable on breach of a covenant contained in a lease of land or other property, and shall not apply to any right or restriction under a mortgage or other charge.

23. Meaning of “connected persons”

- (1) Any question whether a person is connected with another shall for the purposes of this Act be determined in accordance with this section (any provision that one person is connected with another being taken to mean that they are connected with one another).
- (2) A person is connected with an individual if that person is the individual's husband or wife, or is a relative, or the husband or wife of a relative, of the individual or of the individual's husband or wife.
- (3) A person, in his capacity as trustee of a settlement, is connected with any individual who in relation to the settlement is a settlor, and with any person who is connected with such an individual.
- (4) A person is connected with any person with whom he is in partnership, and with the husband or wife or a relative of any individual with whom he is in partnership.
- (5) A company is connected with another company-
 - (a) if the same person has control of both, or a person has control of one and persons connected with him, or he and persons connected with him, have control of the other; or
 - (b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by

treating (in one or more cases) a member of either group as replaced by a person with whom he is connected.

- (6) A company is connected with another person, if that person has control of it or if that person and persons connected with him together have control of it.
- (7) Any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.
- (8) In this section, “**relative**” means brother, sister, ancestor or lineal descendant.

24. Location of assets

For the purposes of this Act-

- (a) the situation of rights or interests (otherwise than by way of security) in or over immovable property is that of the immovable property;
- (b) subject to the following provisions of this subsection, the situation of rights or interests (otherwise than by way of security) in or over tangible movable property is that of the tangible movable property;
- (c) subject to the following provisions of this section, a debt, secured or unsecured, is situated in Nigeria if and only if the creditor is resident in Nigeria;
- (d) shares or securities issued by any governmental, municipal, local or native authority, or by any body created by such an authority, are situated in the country of that authority or place where the authority is situated;
- (e) subject to paragraph (d) of this section, registered shares or securities are situated where they are registered and, if registered in more than one register, where the principal register is situated;
- (f) a ship or aircraft used in international traffic is situated in Nigeria if and only if the owner is then resident in Nigeria, and an interest or right in or over a ship or aircraft is situated in Nigeria if and only if the person entitled to the interest or right is resident in Nigeria;
[2020 No. 1, s. 3]
- (g) the situation of good-will of a trade, business or professional asset is at the place where the trade, business or profession is carried on;
- (h) patents, trademarks and designs are situated where they are registered, and if registered in more than one register, where each register is situated, and copyright, franchises, rights and licences to use any copyright material, patent, trade-mark or design are situated in Nigeria if they, or any rights derived from them, are exercisable in Nigeria; and

- (i) a judgment debt is situated where the judgment is recorded.

25. Supplemental

- (1) No deduction shall be allowable in a computation under this Act more than once from any sum or from more than one sum.
- (2) Reference in this Act to sums taken into account as receipts or as expenditure in computing profits or gains or losses for the purposes of income tax shall include references to sums which would be so taken into account but for the fact that any profits or gains of a trade, profession, employment or vocation are not chargeable to income tax or that losses are not allowable for those purposes.
- (3) In this Act references to income or profits charged or chargeable to tax include references to income or profits taxed or as the case may be taxable by deduction at source.
- (4) For the purposes of any computation under this Act, any necessary apportionments, shall be made of any consideration or of any expenditure and the method of apportionment adopted shall, subject to the express provisions of this Act, be such method as appears to the Service or on appeal to the Appeal Commissioners or the High Court of a State or of the Federal Capital Territory, Abuja to be just and reasonable.

Exemptions and reliefs

26. Exemption for charities, etc.

- (1) Subject to subsection 2 of this section, a gain shall not be chargeable if it accrues to-
 - (a) an ecclesiastical, charitable or educational institution of a public character;
 - (b) any statutory or registered friendly society;
 - (c) any co-operative society registered under the Co-operative Societies Law of any State; or
 - (d) any trade union registered under the Trade Unions Act,
[Cap. T14.]

in so far as the gain is not derived from any disposal of any assets acquired in connection with any trade or business carried on by the institution or society and the gain is applied purely for the purpose of the institution or society, as the case may be.
- (2) If any property to which subsection (1) of this section relates which is held on trust ceases to be subject to such trust-
 - (a) the trustees shall be 'treated as if they had disposed of, and immediately re-acquired, the property for a consideration equal to its market value, any gain on the disposal being

treated as not accruing to the institution or society; and

- (b) if and so far as any of that property represents, directly or indirectly, the consideration for the disposal of assets by the trustees, any gain accruing on that disposal shall be treated as not having accrued to such institution or society,

and, notwithstanding anything in this Act limiting the time for making assessments, any assessment to capital gains tax chargeable by virtue of paragraph (b) of this subsection may be made at any time not more than three years after the end of the year of assessment in which the property ceases to be subject to such trusts.

27. Statutory bodies, etc.

- (1) There shall be exempt from capital gains tax any gains accruing to any local government council.
- (2) Gains accruing to any of the bodies mentioned in this subsection shall be exempt from capital gains tax, that is to say-
 - (a) gains accruing to any company, being a purchasing authority established by or under any law in Nigeria, empowered to acquire any commodity in Nigeria for export from Nigeria; or
 - (b) gains accruing to any corporation established by or under any law for the purpose of fostering the economic development of any part of Nigeria in so far as the gains are not derived from the disposal of any assets acquired by the corporation in connection with any trade or business carried on by it or from the disposal of any share or other interest possessed by the corporation in a trade or business carried on by some other person or authority.

28. Retirement benefits schemes

- (1) A gain shall not be a chargeable gain-
 - (a) if accruing to a person from any disposal of investment held by him as part of any superannuation fund but so that where part only of that fund is approved under section 20 of the Personal Income Tax Act the gain shall be exempt from being a chargeable gain to the same extent only as income derived from the assets would be exempt under that section;
[Cap. P8]
 - (b) if accruing to a person from his disposal of investment held by him as part of any national provident fund or other retirement benefits schemes established under the provisions of any Act or enactment for employees throughout Nigeria,

and such gain shall be exempt from tax under this Act in the same manner, as an investment

income of any of those funds is exempt under paragraph (w) of the Third Schedule to the Personal Income Tax Act.

[Cap. P8.]

- (2) No chargeable gain shall accrue to any person on the disposal of a right to, or to any part of any sum payable out of any superannuation fund.
- (3) In this section, “**superannuation fund**” means a pension, provident or other retirement benefits fund, society or scheme approved by the Joint Tax Board under section 20 (1) (f) of the Personal Income Tax Act.

29. Decorations

A gain shall not be a chargeable gain if it accrues on the disposal by any person of a decoration, awarded for valour or gallant conduct which he acquires otherwise than for consideration in money or money's worth.

30. Stocks and shares, etc.

- (1) Gains accruing to a person from a disposal by it of Nigerian government securities shall not be chargeable gains under this Act.

[2021 No. 1, s. 2]

- (2) Without prejudice to any other applicable law, the gains accruing to a person on disposal of its shares in any Nigerian company registered under the Companies and Allied Matters Act shall be chargeable gains under this Act except where-

- (a) the proceeds from such disposal are reinvested within the same year of assessment in the acquisition of shares in the same or other Nigerian companies:

Provided that tax shall accrue proportionately on the portion of the proceeds which are not reinvested in the manner stipulated in this subsection;

- (b) the disposal proceeds, in aggregate, is less than N100,000,000.00 in any 12 consecutive months, provided that the person making the disposals shall render appropriate returns to the Service on an annual basis; or
- (c) the shares are transferred between an approved Borrower and Lender in a regulated Securities Lending Transaction as defined in the Companies Income Tax Act.

[2021 No. 1, s. 2]

- (3) Without prejudice to the provisions of Section 2 of this Act, the rate of capital gains on disposal of shares pursuant to this Section shall be 10%.

[2021 No. 1, s. 2]

- (4) The tax due in respect of a disposal under this section shall be paid for-

(a) individuals, to the relevant tax authority in line with the provisions of the Personal Income Tax Act; and

(b) companies, to the Federal Inland Revenue Service.

[2021 No. 1, s. 2]

(5) In this section-

“Nigerian government securities” include Nigerian treasury bonds, savings certificates, premium bonds issued under the Savings Bonds and Certificates Act or any other long-term security issued by the Nigerian government;

“Regulated Securities Lending Transaction” shall have the meaning provided under the Companies Income Tax Act.”

[2021 No. 1, s. 2]

31. Replacement of business assets

- (1) If the consideration which a person carrying on a trade obtains for the disposal of, or of his interest in, assets (in this section referred to as “the old assets”) used, and used only, for the purposes of the trade throughout the period of ownership is applied by him in acquiring other assets, or an interest in other assets (in this section referred to as “the new assets”) which on the acquisition are taken into use, and used only, for the purposes of the trade and the old assets and new assets are within one, and the same one, of the classes of assets listed in this section, then the person carrying on the trade shall, on making a claim as respects the consideration which has been so applied be treated for the purposes of this Act-
 - (a) as if the consideration for the disposal of, or of the interest in, the old assets were (if otherwise of a greater amount or value) of such amount as would secure that on the disposal neither a loss nor a gain accrues to him; and
 - (b) as if the amount or value of the consideration for the acquisition of, or of the interest in, the new assets were reduced by the excess of the amount or value of the actual consideration for the disposal of, or of the interest in, the old assets over the amount of the consideration which he is treated as receiving under paragraph (a) of this subsection,but neither paragraph (a) nor paragraph (b) of this subsection shall affect the treatment for the purposes of this Act of the other party to the transaction involving the old assets or of the other party to the transaction involving the new assets.
- (2) Subsection (1) of this section shall not apply if part only of the amount or value of the consideration for the disposal of, or of the interest in, the old assets is applied as described in that subsection but if all of the amount or value of the consideration except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of, or of the interest in, the old assets is so applied, then the person carrying on the trade, on making a claim as respects the consideration which has been so applied, shall be treated for the purposes of this Act-

- (a) as if the amount of the gain so accruing were reduced to the amount of the said part (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain); and
- (b) as if the amount or value of the consideration for the acquisition of, or of the interest in, the new assets were reduced by the amount by which the gain is reduced under paragraph (a) of this subsection,

but neither paragraph (a) nor paragraph (b) of this subsection shall affect the treatment for the purposes of this Act of the other party to the transaction involving the old assets or of the other party to the transaction involving the new assets.

- (3) This section shall only apply if the acquisition of, or of the interest in, the new assets takes place, or an unconditional contract for the acquisition is entered into, in the period beginning twelve months before and ending twelve months after the disposal of, or of the interest in, the old assets, or at such earlier or later time as the Service may by notice in writing allow:

Provided that, where an unconditional contract for the acquisition is so entered into, this section may be applied on a provisional basis without waiting to ascertain whether the new assets or the interest in the new assets, is acquired in pursuance of the contract, and when that fact is ascertained, all necessary adjustments shall be made by making assessments or by repayment or discharge of tax, and shall be so made notwithstanding any limitation in this Act on the time within which assessments may be made.

- (4) If two or more persons are carrying on a trade in partnership, this section shall not apply in relation to anyone of them unless he is, under this Act, to be treated both as making disposal of a share in, or in the interest in, the old assets, and as acquiring a share in, or in the interest in, the new assets; and if those shares are different, that partner's share shall be taken for the purposes of this section to be the smaller share.
- (5) This section shall not apply unless the acquisition of, or of the interest in, the new assets was made for the purpose of their use in the trade, and not wholly or partly for the purpose of realising a gain from the disposal or, of the interest in, the new assets.
- (6) The classes of assets for the purpose of this section are as follows –
 - Class 1. Assets within the heads A and B below.
 - A. Except where the trade is a trade of dealing in or developing land, or of providing services for the occupier of land in which the person carrying on the trade has an estate or interest-
 - (a) any building or part of a building and any permanent or semi-permanent structure in the nature of a building occupied (as well as used) only for the purposes of the trade; and
 - (b) any land occupied (as well as used) only for the purposes of the trade.
 - B. Fixed plant or machinery which does not form part of a building or of a permanent or semi-permanent structure in the nature of a building.

Ships	Class 2
Aircraft	Class 3
Goodwill	Class 4
Stocks and Shares	Class 5

Provided, however, that for the purposes of the application of roll-over relief for shares pursuant to section 30 and 31 of this Act, the proceeds from qualifying disposals must be reinvested within the same year of assessment in the acquisition of eligible shares in the same or other Nigerian companies.

[2023 No.1, s.4]

- (7) If, over the period of ownership or any substantial part of the period of ownership, part of a building or structure is, and any part is not, used for the purposes of a trade, this section shall apply as if the part so used, with any land occupied for purposes ancillary to the occupation and use of that part of the building or structure, were a separate asset, and subject to any necessary apportionments of consideration for an acquisition or disposal of, or of an interest in, the building or structure and other land.
- (8) If the old assets were not used for the purposes of the trade throughout the period of ownership, this section shall apply as if a part of the asset representing its use for the purposes of the trade having regard to the time and extent to which it was, and was not, used for those purposes, were a separate asset which had been wholly used for the purposes of the trade and this subsection shall apply in relation to that part subject to any necessary apportionment of consideration for an acquisition or disposal of, or of the interest in, the asset.
- (9) This section shall apply in relation to a person who, either successively or at the same time, carries on two trades which are in different localities, but which are concerned with goods or services of the same kind, as if, in relation to old assets used for the purposes of the one trade and new assets used for the purposes of the other trade, the two trades were the same.
- (10) This section shall apply with the necessary modifications in relation to a business, profession, vocation or employment as it applied in relation to a trade, and in this section the expressions “trade”, “business”, “profession”, “vocation”, and “employment” have the same meanings as in the Income Tax Acts, but not so as to apply the provisions of the Income Tax Acts as to the circumstances in which, on a change in the persons carrying on a trade, a trade is to be regarded as discontinued, or as set up and commenced.
- (11) The provisions of this Act fixing the amount of the consideration deemed to be given for the acquisition or disposal of assets shall be applied to this section.
- (12) Without prejudice to the provisions of this Act providing generally for apportionments, where consideration is given for the acquisition or disposal of assets some or part of which are assets in relation to which a claim under subsection (1) or subsection (2) of this section applies, and some or part of which are not, the consideration shall be apportioned in such manner as is just

and reasonable.

32. Business re-organisation.

Where a trade or business carried on by a company is sold or transferred to a Nigerian company for the purposes of better organisation of that trade or business or the transfer of its management to Nigeria, and any asset employed in such trade or business is sold or transferred, no tax shall apply under this Act to the sale or transfer of the aforementioned assets to the extent that one company has control over the other or both are controlled by some other person or are members of a recognised group of companies and have been so for a consecutive period of at least 365 days prior to the date of re-organisation:

Provided that if the acquiring company were to make a subsequent disposal of the assets acquired within the succeeding 365 days after the date of transaction, any concessions enjoyed under this subsection shall be rescinded and the companies shall be treated as if they did not qualify for the concessions stipulated in this subsection as at the date of initial re-organisation.

[2019 No. 1, s. 49]

33. Tax not chargeable on proceeds re-invested

Gains accruing to unit holders of a Unit Trust in respect of disposal of securities shall not be chargeable to tax provided the proceeds are re-invested.

[1993 No.3.]

34. Life assurance policies

- (1) This section has effect as respects any policy of assurance or contract for a deferred annuity on the life of any person.
- (2) No chargeable gain shall accrue on the disposal of, or of an interest in, the rights under any such policy of assurance or contract except where the person making the disposal is not the original beneficial owner and acquired the rights or interests for a consideration in money or money's worth.
- (3) Subject to subsection (2) of this section, the occasion of the payment of the sum or sums assured by a policy of assurance or of the first instalment of a deferred annuity, and the occasion of the surrender of a policy of assurance or of the rights under a contract for deferred annuity, shall be the occasion of a disposal of the rights under the policy of assurance or contract for a deferred annuity, and the amount of the consideration for the disposal of a contract for a deferred annuity shall be the market value at that time of the right to that and further instalments of the annuity.

35. Rights under policies of insurance, other than life assurance policies

- (1) The rights of the insured under any insurance effected in the course of a capital redemption business shall constitute an asset on the disposal of which a gain may accrue to the person making the disposal but subject to that, neither the rights of the insurer nor the rights of the insured under any policy of insurance, whether the risks insured relate to property or not, shall

constitute an asset on the disposal of which a gain may accrue.

- (2) Notwithstanding subsection (1) of this section, sums received under a policy of insurance of the risk of any kind of damage to, or the loss or depreciation of assets are for the purposes of this Act, and in particular for the purposes of section 6 of this Act, sums derived from the assets.
- (3) In this section-
 - (a) **“capital redemption business”** means the business (not being life assurance business or industrial assurance business), of effecting; and carrying out contracts of insurance, whether effected by the issue of policies, bonds, or endowment certificates or otherwise, whereby, in return for one or more premiums paid to the insurer a sum or a series of sums is to become payable to the insured in the future;
 - (b) **“industrial assurance business”** means, the business of effecting and carrying out contracts of insurance in connection with an industrial assurance whereby in return for one or more premiums paid to the insurer a sum or a series of sums is to become payable to the insured in the future; and
 - (c) **“policy of insurance”** does not include a policy of assurance on human life.

36. Personal injury

- (1) Subject to subsection (2) of this section, sums obtained by way of compensation or damages for any wrong or injury suffered by an individual in his person in his profession or vocation shall not be chargeable gains within the meaning of this Act; and the foregoing provision of this subsection shall extend to compensation or damages for personal or professional wrong or injury including wrong or injury for libel, slander or enticement.
- (2) Sums obtained by way of compensation for loss of office, up to a maximum of ₦10,000,000.00, shall not be chargeable gains and subject to tax under this Act.

Provided that any sum in excess of ₦10,000,000.00 shall not be so exempt but the excess amount shall be chargeable gains and subject to tax accordingly.

[2020 No. 1, s. 4]

- (3) For the purpose of subsection (2), any person who pays compensation for loss of office to an individual is required, at the point of payment of such compensation, to deduct and remit the tax due under this section to the relevant tax authority.
[2020 No. 1, s. 4]
- (4) The tax so deducted shall be remitted within the time specified under the Pay-As-You-Earn regulations issued pursuant to the Personal Income Tax Act.
[2020 No. 1, s. 4]

37. Principal private residences

- (1) This section applies to a gain accruing to an individual so far as attributable to the disposal of, or of an interest in-
 - (a) a dwelling-house or part of a dwelling-house which is, or has at any time in his period of ownership been, his only or main residence; or
 - (b) land which he has for his own occupation and enjoyment with that residence as its garden or grounds up to an area (inclusive of the site of the dwelling-house) of one acre or such larger area as the Service may in any particular case determine, on being satisfied that, regard being had to the size and character of the dwelling-house, the larger area is required for the reasonable enjoyment of it (or of the part in question) as a residence,

and in the case where part of the land occupied with a residence is and part is not within this subsection, then (up to the permitted area) that part shall be taken to be within this subsection which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the residence.

- (2) The gain shall not be a chargeable gain if the dwelling-house or part of a dwelling-house has been the individual's only or main residence throughout the period of ownership, or throughout the period of ownership except for all or any part of the last twelve months of that period.
- (3) So far as it is necessary for the purposes of this section, to determine which of two or more residences is an individual's main residence for any period-
 - (a) the individual may conclude that question by notice in writing to the Service given within two years from the beginning of that period, or given by the end of the year 1967-68, if that is later, but subject to a right to vary that notice by a further notice in writing to the Service as respects any period beginning not earlier than two years before the giving of the further notice;
 - (b) subject to paragraph (a) of this subsection, the question shall be concluded by the determination of the Service, which may be as respects either the whole or specified parts or the period of ownership in question,

and notice of any determination of the Service under paragraph (b) of this subsection shall be given to the individual who may appeal to the Appeal Commissioners against that determination within thirty days of service of the notice.

- (4) This section shall not apply in relation to a gain unless the acquisition of, or of the interest in, the dwelling-house or the part of a dwelling-house, was made for the purpose of residing in it and not wholly or partly for the purpose of realising a gain from the disposal of it, and shall not apply in relation to a gain so far as attributable to any expenditure which was incurred after the beginning of the period of ownership and was incurred wholly or partly for the purpose of realising a gain from the disposal.

- (5) Apportionments of consideration shall be made wherever required by this section and, in particular, where a person disposes of a dwelling-house only part of which is his only or main residence.

38. Chattels sold for ₦1,000 or less in a year

- (1) Subject to this section, a gain accruing on a disposal of an asset which is tangible movable property shall not be a chargeable gain if the total amount or value of the consideration for the disposal does not in a year of assessment exceed ₦1,000.
- (2) The amount of capital gains tax chargeable in respect of a gain accruing on a disposal of an asset which is tangible movable property for a consideration the total amount or value of which exceeds ₦1,000 shall not exceed half the difference between the amount of that consideration and ₦1,000.

For the purposes of this subsection the capital gains tax chargeable in respect of the gain shall be the amount of tax which would not have been chargeable but for that gain.

- (3) If two or more assets which have formed part of a set of articles of any description all owned at one time by one person are disposed of by that person, and-
- (a) to the same person; or
- (b) to persons who are acting in concert or who are, in terms of section 23 of this Act, connected persons,

whether on the same or different occasions, the two or more transactions shall be treated as a single transaction disposing of a single asset, but with any necessary apportionments of the reductions in tax under subsection (2) of this section, and this subsection shall also apply where the assets, or some of the assets, are disposed of on different occasions on the 1st of April, 1966, but not so as to make any gain accruing on that date a chargeable gain.

- (4) If the disposal is of a right or interest in or over tangible movable property-
- (a) in the first instance subsections (1) and (2) of this section shall be applied in relation to the asset as a whole, taking the consideration as including the market value of what remains undisposed of, in addition to the actual consideration;
- (b) where the sum of the actual consideration and that market value exceeds ₦1,000, the limitation and the amount of tax in subsection (2) of this section shall be of half the difference between that sum and ₦1,000 multiplied by the fraction equal to the actual consideration divided by the said sum.
- (5) The foregoing provisions of this section shall apply in relation to a gain accruing on a disposal of two or more assets (not necessarily forming part of a set of articles of any description) which are tangible movable properties in the same manner as they apply in relation to a gain accruing on a disposal of an asset, or two or more assets which formed part of a set of articles, if in a year of assessment the total amount or value of the consideration is ₦1,000 or more.

(6) This section shall not apply in relation to a disposal of currency of any description.

39. Motor cars

A mechanically propelled road vehicle constructed or adapted for the carriage of passengers shall not be an asset for the purposes of this Act unless it is a vehicle of a type not commonly used as private vehicle and is unsuitable to be so used.

40. Gifts

Subject to the provisions of this Act, where a person disposes, by way of a gift, of an asset acquired by him by way of a gift or otherwise (not being an acquisition on a devolution on death), the person making the disposal shall not be chargeable to capital gains tax under this Act by reference to that disposal.

In this section, “**gift**” has the same meaning as in section 7 (2) of this Act.

41. Double taxation relief

- (1) For the purposes of giving relief on double taxation, in relation to capital gains tax and tax on chargeable gains charged under the law of any country outside Nigeria, in section 38 of the Personal Income Tax Act and sections 44 and 45 of the Companies Income Tax Act (double taxation relief and unilateral relief) for references to income and profits there shall be substituted references to capital gains, and for references to income tax there shall be substituted references to capital gains tax, meaning (as the context may require) tax charged under the law of a country outside Nigeria; and the enactments mentioned as aforesaid in this subsection shall apply accordingly.

[Cap. P8. Cap. C21.]

- (2) Any arrangement set out in an order made under the said section 38 of the Personal Income Tax Act and section 45 of the Companies Income Tax Act, after the commencement of this Act shall, so far as they provide (in whatever terms) for relief from tax chargeable in Nigeria on capital gains by virtue of this section have effect in relation to capital gains tax.
- (3) So far as by virtue of this section capital gains tax charged under the law of a country outside Nigeria may be brought into account under the said provisions of the Personal Income Tax Act and the Companies Income Tax Act as applied by this section, that' tax, whether relief is given by virtue of this section in respect of it or not, shall not be taken into account for the purposes of those provisions of the Personal Income Tax Act and the Companies Income Tax Act as they apply apart from this section.
- (4) Section 38 (2) of the Personal Income Tax Act and section 45 (3) of the Companies Income Tax Act (which relate to disclosure of information for purposes of double taxation) shall without prejudice to the foregoing provisions of this section apply in relation to capital gains tax as they apply in relation to income tax.

42. Relief in respect of delayed remittances of gains

- (1) A person charged or chargeable for any year of assessment in respect of chargeable gains accruing to him from the disposal of assets situated outside Nigeria, may claim that the following provisions of this section shall apply on showing that-
 - (a) he was unable to transfer those gains to Nigeria; and
 - (b) that inability was due to the laws of the country where the income arose, or to the executive action of its government, or to the impossibility of obtaining foreign currency in that territory; and
 - (c) the inability was not due to any want of reasonable endeavours on his part.
- (2) If he so claims, then for the purposes of capital gains tax
 - (a) there shall be deducted from the amounts on which he is assessed to capital gains tax; for the year in which the chargeable gain accrued to the claimant the amount as respects which the conditions in paragraphs (a), (b) and (c) of subsection (1) of this section are satisfied, so far as applicable; but
 - (b) the amount so deducted shall be assessed to capital gains tax on the claimant (or his personal representatives) as if it were an amount of chargeable gains accruing in the year of assessment in which the said conditions cease to be satisfied.
- (3) No claim under this section shall be made in respect of any chargeable gain more than six years after the end of the year of assessment in which that gain accrues.
- (4) The personal representatives of a deceased person may make any claim which he might have

made under this section if he had not died.

Administration provision, etc.

43. Application of income tax administration provisions

- (1) Capital gains tax shall be under the care and management of the Service and the provisions of the Income Tax Acts in the Schedule of this Act shall apply in relation to capital gains tax as they apply in relation to income tax chargeable under those Acts subject to any necessary modifications.
- (2) An appeal shall lie against any assessment to capital gains tax made in accordance with section 65 of the Companies Income Tax Act, as the case may be (as applied under this section) to the body of Appeal Commissioners established under section 71 of the Companies Income Tax Act.

[Cap. C21.]

44. Information as to assets required

- (1) Without prejudice to section 55 of this Act, a notice under section 40 of the Companies Income Tax Act which relates to returns of profits and income respectively for purpose of a claim, the Service may require particulars of any assets acquired by any person on whom the notice is served (or if the notice relates to income, profits or chargeable gains of some other persons, of any assets acquired by that other person) in the period specified in the notice, being a period beginning not earlier than 1 April 1967 but excluding any asset acquired as a trading stock.
- (2) The particulars required under this section may include particulars of the person from whom the assets were acquired and of the consideration for the acquisition.
- (3) Without prejudice to the provisions of the Stamp Duties Act, the Minister with responsibility for matters relating to stamp duties shall demand tax clearance certificates when checking documents on sale by any company of landed properties and other assets before accepting such documents for stamping.

[Cap. S8.]

45. Change of ownership of property

The production of evidence of tax payments shall be a condition for effecting change of ownership of property including shares and stocks.

[1993 No.3.]

46. Interpretation and other supplemental provisions

- (1) In this Act, unless the context otherwise requires-

“**chargeable gains**” has the meaning given in section 1 above;

“**company**” includes any body corporate but does not include a partnership or a corporation sole;

“**connected person**” had the meaning given in section 23 of this Act;

“**disposal of assets**” has the same meaning as in section 6 (1) of this Act;

“**gift**” has the meaning given in section 7 (2) of this Act;

“**Income Tax Acts**” has the same meaning as in section 12 of this Act;

“**market value**” has the meaning given in section 21 (1) of this Act; and

“**part disposal**” has the meaning given by section 6 (2) (b) of this Act;

“**personal representatives**” means the legal personal representatives of a deceased person;

“**recognised group of companies**” means a group of companies as prescribed under the relevant accounting standard;

[2019 No. 1, s. 51]

“**Service**” means the Federal Inland Revenue Service as defined in the Federal Inland Revenue Service (Establishment) Act, 2007

[2019 No. 1, s. 51]

“**year of assessment**” means, in relation to capital gains tax, a year beginning with 1 January and ending with 31 December in the same calendar year but “1967-68” indicates year of assessment beginning on 1 April 1967 and ending 31 March, 1968.

(2) References in this Act to any person to whom any chargeable gains accrue include-

- (a) references to any company or other body corporate established by or under any law in force in Nigeria or elsewhere to whom such gains accrue; or
- (b) reference to a person to whom the Personal Income Tax Act applies to whom the gains accrue.

[Cap. P8.]

(3) A hire-purchase or other transaction under which the use and enjoyment of an asset is obtained by a person for a period at the end of which the property in the asset will or may pass to that person shall be treated for the purposes of this Act, both in relation to that person and in relation to the person from whom he obtains the use and enjoyment of the asset, as if it amounted to an entire disposal of the asset to that person at the beginning of the period for which he obtains the use and enjoyment of the asset, but subject to such adjustments of tax, whether by way of repayment or discharge of tax or otherwise, as may be required where the

period for which that person has the use and enjoyment of the asset terminates without the property in the asset passing to him.

- (4) In the case of a disposal within section 4 of this Act, the time of the disposal shall be the time when the capital sum is received as described in that section.
- (5) For the purposes of section 4 of this Act, there shall be treated as received in Nigeria in respect of any gain all amounts paid, used or enjoyed in or in any manner or form transmitted or brought to Nigeria.
- (6) Where two or more persons carry on a trade or business in partnership-
 - (a) tax in respect of chargeable gains accruing to them on the disposal of any partnership assets shall, in Nigeria be assessed and charged on them separately; and
 - (b) any partnership dealings shall be treated as dealings by the partners and not by the firm as such.
- (7) Subject to the provisions of this Act, the provisions of the Personal Income Tax Act and the Companies Income Tax Act relating to residence of partnership shall, in so far as the provisions are not inconsistent with the provisions of this Act, apply in relation to tax chargeable in pursuance of this Act as they apply in relation to income tax; so however that any reference to the income of a partner from a partnership shall be construed as a reference to such proportion of gains of the partnership as is attributable to the partner in the computation of capital gains accruing to that partner on the disposal of any partnership assets.
[Cap. P8. Cap. C21.]
- (8) Any provisions of this Act introducing the assumption that assets are sold and immediately re-acquired shall not imply that any expenditure is incurred as incidental to the sale or re-acquisition.
- (9) The reference in this Act to any enactment apart from this Act is a reference to that enactment as amended, altered, substituted or replaced by any other enactment or law relating to the subject matter and applicable.

47.Short title

This Act may be cited as the Capital Gains Tax Act.

SCHEDULE

Provisions of the Income Tax Acts applied to capital gains tax

Companies Income Tax Act [Cap. C21.]

PART II..... (administration) except sections 4 (1), 5, 45 and 67

PART VIII(persons chargeable, agents, liquidators, etc.)

[PART IX ... Deleted by 2020 No. 1, s. 5]

PART X(assessments)

PART XI.....(appeals)

PART XII..... (collection, recovery and repayment) except section 77

PART XIII(offences and penalties)

Section 102.....(conduct of proceedings in magistrate's court)

Personal Income Tax Act [Cap. P8.]

Sections 46, 48 and 50. (disclosure and procurement of information, power to appoint agent and returns)

CHAPTER C3

CASINO TAXATION ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Tax on net gaming revenue of companies licensed to operate casinos.
2. Power to enter and inspect, etc., returns.
3. Returns and payment of tax. Indemnity.
4. Chargeability to tax.
5. Books of account.
6. Assessments, appeals, etc.
7. Time within which payment is to be made.
8. Errors and defects in assessment and notice.
9. Relief in respect of error or mistake.
10. Service of documents, and failure to comply with terms of any notice.
11. False statements and returns.
12. Action for tax by board.
13. Incorrect returns by licensee, etc.
14. Offences relating to collection, etc., of tax.
15. Priority of claim for tax.
16. Power to distrain.
17. Place of an offence.
18. Delegation of certain powers by board.
19. Signification and execution of powers, duties, etc.

20. Returns, etc., to be furnished.
21. Official secrecy.
22. Refund of tax.
23. Prosecutions and liability to tax.
24. Penalties.
25. Regulations.
26. Short title and interpretation.

CHAPTER C3

CASINO TAXATION ACT

An Act to impose a tax on the net gaming revenue of casinos in the Lagos territory, and for related purposes,

[1965 No. 26.]

[Commencement.] [1st April, 1965]

1. Tax on net gaming revenue of companies licensed to operate casinos

- (1) There shall be imposed in respect of every casino licensed under the Casino Licensing Act 1964 (hereafter referred to as a "casino") a tax on the net gaming revenue thereof to be known as casino revenue tax and payable by the licensee as hereafter provided.
- (2) Subject to the provisions of this section, the tax shall be twelve-and-one-half per cent of such revenue, and a licence to operate a casino shall be granted only to a company having such purpose as its main object, and duly incorporated in Nigeria under the Companies and Allied Matters Act.

[Cap. C20.]

- (3) Tax under this Act shall rank in priority to tax under the Companies Income Tax Act and be a debt recoverable by the Federal Board of Inland Revenue (hereafter referred to as "the Board"); but for the purposes of this Act, the Companies Income Tax Act shall have effect and the provisions thereof, subject to this Act, shall apply so however that, as the case may require-

[Cap. C21.]

- (a) reference to any person in the Casino Licensing Act 1964 shall be construed as references to a company so incorporated;
- (b) references in this Act to a licensee shall be construed as references to any such company; and
- (c) references in the Companies Income Tax Act to any company shall be construed as references to a licensee under this Act.

[Cap. C21.]

- (4) Tax under this Act shall be a first charge on the assets of the licensee; and anything in any other Act to the contrary notwithstanding the tax shall accordingly rank in priority to all costs, taxes and charges whatsoever.
- (5) In the application of this section, "net gaming revenue" means the daily takings in every period, continuous or intermittent, of up to fifteen hours in anyone of twenty four hours computed from the time when play at tables or elsewhere in the casino is first open for gaming during any such period and thereafter is closed, allowances being made by way of set-off only

for winnings paid to patrons or their nominees by the licensee in the course of play or within fifteen hours after play is closed; and daily takings shall be construed accordingly.

- (6) The House of Representatives may from time to time by resolution reduce or increase the rate of tax imposed by subsection (1) of this section, and the resolution may specify the date on which it is to take effect. A copy of the resolution certified by the clerk to the House shall be published in the Federal Gazette, and the resolution shall have effect on the date specified in the resolution, or the date of such publication, as the case may be.

2. Power to enter and inspect, etc., returns

- (1) Any person may, on production of a warrant signed by the chairman of the Board authorising him in that behalf, enter on any part of the premises where the casino is. at any time during the hours of play or at reasonable times outside those hours and inspect statements or returns required for the purposes of this Act and where necessary certify as correct any such statement or return, whether or not it is intended to be delivered or sent to the Board.
- (2) The warrant of authority under this section shall in addition to authorising the holder to do such things as the Board may require for the purposes of this Act, give information as to the name and status of the person authorised sufficient to identify him, and the warrant shall also be signed by such person.

3. Returns and payment of tax. Indemnity

- (1) The licensee shall in the afternoon of the day when play closes in the casino, or so soon thereafter as may be practicable, deliver a return to the Board showing the net gaming revenue received during the course of play in that period; and the return shall, before such delivery, be certified as correct by a person authorised for the purpose by the Board under this Act.
- (2) The licensee shall, in addition, as directed by the Board, prepare and forward returns at intervals of not more than one week and one month respectively, calculated from such date as the Board may in writing prescribe; and the returns shall be a consolidation of the net gaming revenue for the interval in respect of which the return is required.
- (3) Where the prescribed interval does not exceed one week, the licensee shall, not later than the third day after delivery of the return to the Board is required to be made, calculate and pay to the Board an amount as tax under this Act, based on the net gaming revenue for that period.
- (4) Where the prescribed interval does not exceed one month, and whether or not returns at lesser intervals are being delivered to the Board, the return under this subsection shall be certified by a chartered accountant; and any amount as tax under this Act due and unpaid at the date of delivery of the return shall forthwith be paid by the licensee to the Board without any assessment being raised.
- (5) Every person answerable for payment of tax under this section may retain out of moneys coming into his hands on behalf of a licensee so much thereof as shall be sufficient to pay the tax, and shall be indemnified accordingly by virtue of this Act for all payments of tax made by him for the purposes of this Act.

4. Chargeability to tax

A licensee shall, for the purposes of this Act, be chargeable to tax-

- (a) in its own name; or
- (b) in the name of the managing director, or director as the case may be of the licensee in Nigeria in like manner and to like amount as such company would be chargeable; or
- (c) in the name of a receiver or liquidator, or of any attorney, agent or representative thereof in Nigeria, in like manner and to like amount as the licensee would have been chargeable if no receiver or liquidator had been appointed.

5. Books of account

- (1) If the licensee chargeable with tax under this Act fails or refuses to keep books of account which, in the opinion of the board, are adequate for the purpose of such tax, the Board may by notice in writing direct it to keep them in the English language and in such form as may be specified; and subject to the provisions of the next succeeding subsection, the licensee shall comply with any such direction.
- (2) An appeal shall lie to the Appeal Commissioners from any direction by the Board under this section in the same manner as if the direction were a requirement under the Companies Income Tax Act; the Appeal Commissioners may confirm or modify any such direction and their decision shall be final.

[Cap. C21.]

- (3) The failure to comply with any direction of the Board, or requirement of the Appeal Commissioners as the case may be, under this section, shall be an offence against this Act.

6. Assessments, appeals, etc.

- (1) Anything to the contrary in this Act notwithstanding, the Board of its own motion, or a licensee, may require an assessment to be raised for any year of assessment to which payment of tax under this Act relates, and the Board shall raise an assessment accordingly.
- (2) Any such assessment may include any earlier period or periods if the Board is satisfied for any reason that a previous assessment is incorrect or has not been raised; but nothing in this subsection shall be construed so as to authorise an assessment for a period more than six years before the date of any assessment under subsection (1) of this section, or as the case may be, six years before the date when the assessment not raised ought, in the ordinary course, to have been raised.
- (3) No objection or appeal by a licensee shall lie against the Board in respect of any assessment under subsection (1) or (2) of this section raised on figures returned by the licensee; but in any other case the provisions of the Companies Income Tax Act as to objections, revisions and appeals shall have effect, so however-

[Cap. C21.]

- (a) that references to tax shall be construed as references to tax under this Act; and
 - (b) references to income in relation to assessable, total or chargeable income, shall be construed as references to income in relation to net gaming revenue.
- (4) For the purposes of this section-
- (a) “year of assessment” means the period of twelve months commencing on 1 January; and
 - (b) notwithstanding the fact that under the Companies Income Tax Act an assessment is final and conclusive, the Board may take into account the amount which ought to have been charged, and shall consider all other facts which in its opinion are relevant.

[Cap. C21.]

7. Time within which payment is to be made

- (1) Subject to the provisions of this section, where an assessment to tax is raised under this Act and objections and appeals as the case may be have been disposed of, any tax then outstanding and unpaid shall be payable by the licensee at the place stated in the notice of assessment within two months after service of such notice upon the licensee or the disposal of any appeal or objection, whichever is the earlier, but the Board in its discretion may extend the time within which payment is to be made.
- (2) Collection of tax in any case where notice of an objection or an appeal has been given by a licensee under this Act, shall remain in abeyance until such objection or appeal is determined, but the Board may enforce payment of that portion, if any, of the tax which is not in dispute; and upon the determination of an objection or appeal the Board shall serve upon the licensee a notice of the tax payable as so determined, and that tax shall be payable in accordance with the foregoing provisions of this section.
- (3) If any tax is not paid as prescribed in this section, the licensee shall be guilty of an offence against this Act, and in addition the provisions of this Act as to distraint shall have effect.

8. Errors and defects in assessment and notice

- (1) No assessment, warrant or other proceeding purporting to be made in accordance with the provisions of this Act shall be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if it is in substance and effect in conformity with or according to the intent and meaning of this Act and if the licensee assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.
- (2) An assessment shall not be impeached or affected-
 - (a) by reason of a mistake therein as to-

- (i) the name of the licensee or of a person in whose name the licence is chargeable; or
 - (ii) the description of any profits; or
 - (iii) the amount of tax charged;
- (b) by reason of any variance between the assessment and the notice thereof:

Provided that in cases of assessment the notice thereof shall be duly served on the licensee or the person in whose name the licensee is chargeable, and such notice shall contain, in substance and effect, the particulars on which the assessment is made.

9. Relief in respect of error or mistake

- (1) If the licensee having paid tax for any year of assessment thereafter alleges that any assessment made upon it for that year was excessive by reason of some error or mistake in the return, statement or account made by or on behalf of the licensee for the purposes of the assessment, the licensee may, at any time not later than one year after the end of the year of assessment within which the assessment was made, make an application in writing to the Board for relief.
- (2) The Board shall, on receipt of the application, make such enquiries as are necessary and, subject to the provisions of this section, give by way of refund of tax, such relief in respect of the error or mistake as appears to be reasonable and just; but no such relief shall be given in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where the return, statement or account was in fact made on the basis or in accordance with the practice of the Board generally prevailing at the time when the return, statement or account was made.
- (3) The Board shall in respect of applications under this section have regard to all the relevant circumstances of the case, and shall take into account the liability of the licensee and assessments made upon the licensee in respect of other years, and consider whether the granting of relief would result in the exclusion from charge to tax of any part of the net gaming revenue of the licensee.
- (4) Any determination by the Board under this section shall be final and conclusive.

10. Service of documents, and failure to comply with terms of any notice

- (1) Except in the case of personal service under the Companies Income Tax Act as affected by this Act, it shall be sufficient compliance therewith if a duly stamped envelope containing the documents to be served by post is addressed to the registered office of the licensee, or to the last known address of the licensee, as the case may be.
- (2) Where the document served is a notice touching or concerning tax under this Act the failure to comply with its requirements shall be an offence against this Act.

11.False statements and returns

- (1) Any person other than a licensee under this Act or any person in the employ of the licensee who-
 - (a) for the purpose of obtaining any deduction, set-off, relief or payment in respect of tax under this Act or in any return, account or particulars made or furnished with reference to such tax, knowingly makes any false statement or false representation; or
 - (b) aids, abets, assists, counsels, incites or induces any other person-
 - (i) to make or deliver any false return of statement under this Act; or
 - (ii) to keep or prepare any false account or particulars concerning any net gaming revenue on which tax is payable under this Act; or
 - (iii) unlawfully to refuse or neglect to pay tax, shall be guilty of an offence against this Act.
- (2) The Board may compound any offence under this section and with the leave of the court may, before judgment, stay or compound any proceedings thereunder.

12.Incorrect returns by licensee, etc.

- (1) If the licensee or any person in the employ of the licensee without reasonable excuse-
 - (a) makes or certifies a return which by reason of any omission or under-statement of the net gaming revenue liable to tax under this Act is incorrect; or
 - (b) gives any incorrect information in relation to any matter or thing affecting the liability of the licensee to tax, the licensee and any such person shall be guilty of an offence against this Act, and in addition shall be liable to double the amount of tax which has been undercharged in consequence of such incorrect return or information, or would have been so undercharged if the return or information had been accepted as correct.
- (2) Nothing in the foregoing subsection shall apply unless the complaint concerning the offence was made in the year of assessment in respect of or during which the offence was committed, or within six years after the expiration thereof.
- (3) The Board may compound any offence under this section, and with the leave of the court may, before judgment, stay or compound any proceedings thereunder.
- (4) For the purposes of this section, a return shall be deemed to be made both by the licensee and any other person signing the return on behalf of the licensee.

13. Action for tax by board

Tax under this Act may be recovered in any court of competent jurisdiction in the same manner as if it were tax for the purposes of the Companies Income Tax Act, and the provisions of that Act as to suits by the Board shall, with all necessary modifications, have effect accordingly.

[Cap. C21.]

14. Offences relating to collection, etc., of tax

Any person who-

- (a) being a person appointed for the due administration of this Act or employed in connection with the assessment and collection of the tax who-
 - (i) without proper regard thereto wilfully or negligently certifies figures in the daily return of net gaming revenue of a casino; or
 - (ii) demands from the licensee an amount in excess of the authorised assessment of the tax; or
 - (iii) withholds for his own use or otherwise any portion of the amount of tax collected; or
 - (iv) renders a false return, whether orally or in writing, of the amount of tax collected or received by him; or
 - (v) defrauds any person, embezzles any money, or otherwise uses his position so as to deal wrongfully with the Board; or
- (b) not being authorised under this Act to do so, collects or attempts to collect the tax under this Act, is guilty of an offence under this Act.

15. Priority of claim for tax

- (1) No goods or chattels belonging to the licensee at the time any tax under this Act becomes in arrear shall be liable to be taken by virtue of any execution or other process, warrant or authority whatever, or by virtue of any assignment on any account or pretence whatever, unless the person at whose suit the execution or seizure is made or to whom the assignment was made, pays or causes to be paid to the board, before the sale or removal of the goods or chattels, all arrears of tax which are due at the time of the seizure, or which are payable for the year in which the seizure is made.
- (2) In case of neglect or refusal to pay the tax so claimed, the Board may distrain the goods and chattels notwithstanding the seizure or assignment, and may proceed to the sale thereof, as prescribed by section 16 of this Act, for the purpose of obtaining payment of the whole of the tax charged and claimed, and reasonable costs and charges attending such distress and sale, and the Board and every person acting under the authority of the Board so doing shall be indemnified by virtue of this Act.

16. Power to distrain

- (1) If the licensee neglects or refuses to pay the sum charged upon demand made, a principal inspector of taxes shall for non-payment thereof distrain upon the premises in respect of which the tax is charged, without any further authority for the purpose than a warrant under this section issued for the purpose by the Board.
- (2) The sum included in the demand shall be deemed to be a debt by the licensee as judgment debtor owing to the Board as judgment creditor and payable under a judgment of a High Court in the Federation, and for the purpose of levying distraint under the foregoing subsection, the chairman of the Board or, in his absence, his deputy, shall have the powers of registrar and sheriff of such a court; but any seizure and sale by way of distress may be enforced under the following provisions of this section by a principal inspector of taxes acting under a warrant signed by the chairman of the Board or his deputy.
- (3) For the purpose of levying any such distraint, any inspector duly authorised by a warrant for that purpose, may break open in the daytime any premises, calling to his assistance any constable, and any such constable shall, when so required, aid and assist the inspector in the execution of the warrant and in levying the distress.
- (4) The warrant to break open shall be executed by or under the direction of and in the presence of the inspector, and any distress so levied shall be kept for five days at the costs and charges of the licensee.
- (5) If the licensee does not pay the sum due, together with the costs and charges within the said five days, the distress shall be appraised by a competent valuer and shall be sold by public auction for payment of the sum due and all costs and charges. Any overplus coming by the distress, after the deduction of the costs and charges and of the sum due, shall be restored to the licensee.
- (6) If the premises are unoccupied and no distress can be found thereon at the time the tax is payable, the inspector may at any future time when there is any distress to be found on the premises enter, seize and sell under the same powers as if a distraint had been made on the premises at the time the tax became due and as if the licensee had been in occupation at that time.

17. Place of an offence

Any offence under this Act shall be deemed to occur at the place where the offence was committed, or in Lagos.

18. Delegation of certain powers by Board

- (1) Subject to the provisions of this section, the Board may by notice in the Federal Gazette or in writing delegate to any person any special power or duty of the Board under this Act or the Companies Income Tax Act, and may authorise any person to receive notices or other documents on its behalf. The delegation or authority, as the case may require, may be given upon such terms and conditions as the Board thinks fit; but nothing in this section shall be

construed-

[Cap. C21.]

- (a) so as to authorise delegation of any power-
 - (i) to administer this Act or the Companies Income Tax Act; or
 - (ii) to commence prosecution for offences under this Act; or
 - (iii) to decide to appeal against any decision of a judge, magistrate or the Appeal Commissioners under the Companies Income Tax Act; or
 - (b) so as to prohibit the Board from its exercising any power so delegated, if the chairman thinks fit.
- (2) The power conferred by this section to delegate authority shall not be exercised in favour of any officer below the rank of principal inspector of taxes without the approval in writing of the Minister, given on such terms as he thinks fit.

19. Signification and execution of powers, duties, etc.

- (1) Subject to the provisions of this section, anything required to be done by the Board for the purposes of this Act, shall be signified under the hand of the chairman or any person duly authorised by him; and notice thereof shall be published in the Federal or any State Gazette as the case may be, unless the chairman otherwise directs.
- (2) Anything so done shall, until the contrary is shown, be valid if-
 - (a) the notice or document, as the case may be, is printed and the name of the Board appears in any manner thereon; and
 - (b) it purports to be signed by the chairman or by any person authorised by the chairman.

20. Returns, etc., to be furnished

- (1) The Board may from time to time prescribe forms for use under this Act, and include therein a declaration as to the truth of the contents and if any such form purports to be completed and signed by or on behalf of a licensee, it shall for all purposes be deemed to have been furnished accordingly, unless the contrary is proved; any person signing a prescribed form shall be deemed to be cognisant of all matters therein.
- (2) Any return, claim, objection, or appeal under this Act shall, if a form is prescribed, be prepared on that form with such modifications as are necessary, unless the Board for any reason dispenses with its use.

21. Official secrecy

- (1) All returns and other documents whatsoever relating to the operation of a casino and tax payable under this Act shall be classified as confidential and be so dealt with by all persons

engaged in administering this Act.

- (2) Any matter so classified may in any particular case, if the Minister thinks fit, be treated as classified matter under the Official Secrets Act, the disclosure of which would be prejudicial to the security of Nigeria, and that Act shall have effect accordingly.

[Cap.03.]

- (3) In any other case the disclosure without the authority of the board of matter classified as confidential under this section shall be an offence against this Act; but, without the authority in writing of the Minister, matter so classified shall not be divulged or communicated to any court in any prosecution under this section.

22. Refund of tax

- (1) Unless otherwise provided by this Act, a claim for refund of tax shall not be allowed unless it is made in writing within one year after the end of the year of assessment to which it relates.
- (2) If the Board certifies the amount of tax to be refunded under this Act or pursuant to any order of a court of competent jurisdiction, the Accountant-General of the Federation shall upon delivery to him of the certificate pay that amount to the person entitled.

23. Prosecutions and liability to tax

- (1) Without prejudice to the institution of proceedings by the Attorney-General of the Federation, a prosecution in respect of any offence touching or concerning assessment to tax shall not be commenced except with the approval of the Board.
- (2) The institution of proceedings for, or the imposition of a penalty, fine or term of imprisonment shall not relieve a licensee from liability to payment of any tax for which the licensee is or may become liable under this Act.

24. Penalties

Any person guilty of an offence against this Act, or against the Companies Income Tax Act as applied by this Act, and notwithstanding penalties for offences as therein prescribed, shall on conviction-

[Cap. C2I.]

- (a) for a first offence involving the licensee or a director of the casino, or its manager or secretary (not being the failure to furnish returns, statements or information where required or to keep prescribed records) be liable to a fine of one thousand naira or to imprisonment for a term of two years or to both, and on any subsequent conviction, whether for the same type of offence or not, be liable to a fine of two thousand naira or to imprisonment for a term of three years, or to both, and in addition on such subsequent conviction to forfeiture of the casino licence;
- (b) if the offence involves failure to furnish returns, statements or information where required or to keep prescribed records, the offender shall be liable to a further sum of one hundred naira for each and every day during which such failure continues, and in default of payment, in the

case of a natural person, to an additional term of imprisonment for a term of six months, and the liability therefor shall commence as directed by the court so convicting, or in default of such direction, on the day following the conviction;

- (c) for a first offence not involving the licensee or a director of the casino, or its manager or secretary, in any case be liable to a fine of four hundred naira or to imprisonment for a term of one year or to both, and on any subsequent conviction, whether for the same type of offence or not, to a fine of one thousand naira or to imprisonment for a term of two years, or to both.

25.Regulations

The Minister may make Regulations generally for the purpose of this Act.

26.Short title and interpretation

- (1) This Act may be cited as the Casino Taxation Act, and shall apply to the Lagos territory, so however that in respect of any company liable to tax under this Act, it shall apply to the Federation.
- (2) In this Act-

“**Board**” means the Federal Board of Inland Revenue established under the Companies Income Tax Act;

“**casino**” has the meaning assigned by the Casino Licensing Act 1964;

“**licensee**” means any company within the meaning of section 1 of this Act operating a casino in the Lagos territory, and liable to tax under this Act;

“**Minister**” means the Minister of the Government of the Federation charged with responsibility for finance;

“**net gaming revenue**” has the meaning assigned by section 1 (3) of this Act.

CHAPTER C10

CHARTERED INSTITUTE OF TAXATION OF NIGERIA

ARRANGEMENT OF SECTIONS

PART I

Establishment, etc., of the Chartered Institute of Taxation of Nigeria

SECTION

1. Establishment of Chartered Institute of Taxation of Nigeria
2. Membership of the Institute
3. Election of the President and Vice-President
4. Council of the Institute
5. Power of the Council

PART II

Financial provisions

6. Fund of the Institute
7. Accounts, etc

PART III

The Registrar and the register

8. Appointment of Registrar, etc., and preparation of the register
9. Publication of the register and list of corrections

PART IV

Registration

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CHAPTER C10

CHARTERED INSTITUTE OF TAXATION OF NIGERIA ACT

An Act to establish the Chartered Institute of Taxation of Nigeria, to regulate members of the profession and provide for matters connected therewith.

[1992 No.76]

[Commencement.] [30th November, 1992]

PART I

Establishment, etc., of the Chartered Institute of Taxation of Nigeria

1. Establishment, etc., of the Chartered Institute of Taxation of Nigeria

- (1) There is hereby established a body to be known as the Chartered Institute of Taxation of Nigeria (in this Act referred to as “the Institute”) which shall be a body corporate under that name and be charged with the general duty of-
 - (a) determining what standards of knowledge and skill are to be attained by persons seeking to become registered members of the taxation profession (in this Act referred to as “the profession”) and reviewing those standards, from time to time as circumstances may require;
 - (b) securing, in accordance with the provisions of the Act, the establishment and maintenance of a register of fellows, graduates and student members of the Institute and the publication from time to time, of lists of those persons; and
 - (c) regulating and controlling the practice of the profession in all its ramifications;
 - (d) maintaining, in accordance with this Act, of discipline within the profession;
 - (e) performing, through the Council established under section 4 of this Act, the functions conferred on it by this Act.
- (2) The Institute shall have perpetual succession and a common seal which shall be kept in such custody as the Council may, from time to time authorise.

2. Membership of the Institute

- (1) Subject to the provisions of this Act, persons admitted to membership of the Institute shall be registered as members in the category of-
 - (i) fellows;

- (ii) associate member; and
 - (iii) graduate members.
- (2) Persons registered under this Act as members shall be entitled to be enrolled-
- (a) as fellows, if they satisfy the Council that for the period of five years immediately preceding the date of application in that behalf, they have been fit persons and have, in addition to being the holders of approved academic qualifications, been in continuous active practice as professional tax practitioners or administrators;
 - (b) as associate members, if for the period of not less than three years immediately preceding the date of application in that behalf (the period of membership of the Institute of Taxation in the discretion of the Council, counting in that behalf), have been enrolled as graduate members and are otherwise fit persons; and
 - (c) as graduate members, if they satisfy the Council that they have passed the Institute's examinations and are otherwise fit and proper persons to be enrolled.

3. Election of President and Vice-President

- (1) The President and Vice-President shall be elected by the members of the Council.
- (2) The president and Vice-President shall each hold office for a term of two years from the date of their election, and the President shall be the chairman at the meetings of the Institute, so however that in the event of the death, incapacity or inability for any reason of the President, the Vice-President shall act as President for the unexpired portion of the term of office and as chairman, as the case may be, and references in this Act to the President shall be construed accordingly.
- (3) The President and Vice-President shall respectively be chairman and vice-chairman of the Council of the Institute under this Act.
- (4) If the President or the Vice-President ceases to be a member of the Institute, he shall cease to hold any of the offices designated under this section.

4. Council of the Institute

- (1) There shall be, as the governing body of the Institute, a Council which shall be charged with the administration and general management of the Institute.
- (2) The Council shall consist of-
 - (a) a chairman who is President of the Institute;
 - (b) a vice-chairman;

- (c) the chairman of the Federal Board of Inland Revenue or his representative, not below the rank of a Director;
 - (d) two representatives of the Joint Tax Board;
 - (e) fifteen persons elected by the Institute;
 - (f) the three immediate past Presidents of the Institutes, including the former Institute for a maximum of a three years term after which a past President automatically retires;
 - (g) a representative each of the following Ministries, that is:
 - (i) Finance and Economic Development; and
 - (ii) Education; and
 - (h) two persons to represent institutions of higher learning in Nigeria offering courses leading to an approved qualification, to be appointed by the Minister in rotation, so however that the two shall not come from the same institution.
- (3) The provisions of the First Schedule to this Act shall have effect with respect to the qualifications and tenure of office of members of the Council and other matters therein mentioned.

[First Schedule]

5. Power of the Council

The Council shall have power to do anything which in its opinion is calculated to facilitate the carrying on of the activities of the Institute.

PART II

Financial provisions

6. Fund of the Institute

- (1) There shall be established and maintained for the purpose of this Act a fund.
- (2) There shall be paid into the fund established pursuant to subsection (1) of this section-
 - (a) all fees and other moneys payable to the Institute in pursuance of this Act; and
 - (b) such moneys as may be payable to the Institute whether in the course of the discharge of its functions or not.
- (3) There shall be paid out of the fund of the Institute established pursuant to subsection (1) of this section-

- (a) the remuneration and allowances of the Registrar and other employees of the Institute;
 - (b) such reasonable travelling and subsistence allowance of members of the Council in respect of the time spent on the business of the Council as the Council may determine; and
 - (c) any other expenses incurred by the Council in the discharge of its functions under this Act.
- (4) The Council may invest moneys in the fund in any security created or issued by or on behalf of the Federal Government or in any other securities in Nigeria approved by the Council.
- (5) The Council may, from to time, borrow money for the purposes of the Institute and any interest payable on moneys so borrowed shall be paid out of the fund.

7. Accounts, etc

The Council shall keep proper accounts on behalf of the Institute in respect of each financial year and proper records in relation to those accounts and the Council shall cause the accounts to be audited by a firm of chartered accountants and when audited, the accounts shall be submitted to the members of the Institute for approval by them at the next annual general meeting.

PART III

The Registrar and the register

8. Appointment of the Registrar, etc., and preparation of the register

- (1) The Council shall appoint a fit and proper person to be Registrar for the purposes of this Act, and such other persons as the Council may, from to time, think necessary to assist the Registrar in the performance of his function under this Act.
- (2) It shall be the duty of the Registrar to prepare and maintain, in accordance with rules made by the Council, a register of the names, addresses, approved qualifications, and of such other qualifications and particulars as may be specified in the rules, of all persons who are entitled in accordance with the provisions of this Act to be enrolled as fellows, associate members, graduate members and student members or who, in the manner prescribed by such rules, apply to be so registered.
- (3) The register shall consist of four parts of which-
- (a) the first shall be in respect of fellows;
 - (b) the second part shall be in respect of associate members;
 - (c) the third part shall be in respect of graduate members;

- (d) the fourth part shall be in respect of student members.
- (4) Subject to the foregoing provisions of this section, the Council shall make rules with respect to the form and keeping of the register and the making of entries therein, and in particular-
 - (a) regulating the making of application for enrolment or registration, as the case may be, and providing for the evidence to be produced in support of such applications;
 - (b) providing for the notification of the Registrar, by the person to whom any registered particulars relates, of any change in those particulars;
 - (c) authorising a registered person to have any qualification which is in relation to the relevant division of the profession, either an approved qualification for the purposes of this Act, entered in relation to his name in addition to or, as he may elect, in substitution for any other qualification as registered;
 - (d) specifying the fees, including any annual subscription, to be paid to the Institute in respect of the entry of names on the register, and authorising the Registrar to refuse to enter a name on the register until any fee specified for the entry has been paid,

but rules made for the purposes of paragraph (d) of this subsection shall not come into force until they are confirmed at a meeting of the Institute.

- (5) It shall be the duty of the Registrar-
 - (a) to correct, in accordance with the Council's directions, any entry in the register which the Council directs him to correct as being in the Council's opinion an entry which was incorrectly made;
 - (b) to make, from time to time, any necessary alteration to the registered particulars of registered persons;
 - (c) to remove from the register the name of any registered person who had died; and
 - (d) to record the names of members of the Institute who are in default for more than six months in the payment of annual subscriptions, and to take such action in relation thereto (including removal of the names of defaulters from the register) as the Council may direct or require.
- (6) If the Registrar-
 - (a) sends by post to any person a letter addressed to him at his address on the register enquiring whether the registered or enrolled particulars relating to him are correct, and receives no reply to the letter within a period of six months from the date of posting; and
 - (b) upon the expiration of that period, send in the like manner to the person in question a

second similar letter, and receives no reply to that letter within three months from the date of posting it,

the Registrar may remove the particulars relating to the person in question from the register:

Provided that the Council may direct the Registrar to restore to the appropriate part of the register any particulars removed therefrom under this subsection.

9. Publication of register and list of correction

- (1) It shall be the duty of the Registrar-
 - (a) to cause the register to be printed, published and put on sale to members of the public not later than two years from the commencement of this Act; and
 - (b) thereafter to cause to be printed, published and put on sale as aforesaid, either a corrected edition of the register or a list of corrections made to the register, since it was last printed; and
 - (c) to cause a print of each edition of the register and of each list of corrections to be deposited at the principal offices of the Institute; and
 - (d) to keep the register and lists so deposited to be made available to members of the public at all reasonable times for inspection.
- (2) A document purporting to be a print of an edition of a register published under this section by authority of the Registrar, or documents purporting to be prints of an edition of a register so published and of list of corrections to that edition so published shall (without prejudice to any other mode of proof) be admissible in proceedings as evidence that any person specified in the document, or the documents read together, as being registered or enrolled was so registered at the date of the edition or of the list of corrections, as the case may be, and that any person not so registered.
- (3) Where in accordance with subsection (2) of this section, a person is, in any proceeding shown to have been or not to have been registered or enrolled at a particular date, he shall, unless the contrary is proved, be taken for the purpose of those proceedings as having at all material times thereafter continued to be, or not to be so enrolled or registered.

PART IV

Registration

10. Registration of members

- (1) Subject to section 11 of the Act and to rules made under section 8 of this Act, a person shall

be entitled to be registered as a member of the Institute if-

- (a) he passes the qualifying examination accepted by the Council under this Act and completes the practical training prescribed; or
- (b) he is by law entitled to practice for all purposes as a tax administrator or practitioner in the country in which the qualification was granted and, if the Council so requires, he satisfies the Council that he has sufficient experience as a tax administrators or practitioner; or

he satisfies the Council that immediately before the commencement of this Act he had not less than-

- (i) One year's practical experience in accounting in the case of a registered member of the Institute of Chartered Accountants in Nigeria;
 - (ii) two years' practical experience in tax administration or practice in the case of a person who has passed the final of the Federal Board of Inland Revenue Training School examination or its equivalent;
 - (iii) three years' practical experience in taxation in the case of any other person possessing a degree certificate from Nigeria or overseas recognised institution majoring in taxation.
- (2) An applicant for registration shall, in addition to evidence of qualification, satisfy the Council that-
- (a) he is of good character;
 - (b) he has attained the age of 21 years;
 - (c) he has not been convicted in Nigeria or elsewhere of any offence involving fraud or dishonesty; and
 - (d) he fulfils his financial obligations to the Institute.
- (3) The Council may, in its sole discretion, provisionally accept a qualification produced in respect of an application for registration under this section, or direct that the application be renewed within such period as may be specified in the direction.
- (4) Any entry directed to be made in the register under subsection (3) of this section, shall show that such registration is provisional and no entry so made shall be converted to full registration without the consent of the Council signified in writing in that behalf.
- (5) The Council shall, from time to time, publish in the *Gazette* particulars of qualifications for the time being accepted as aforesaid.

11. Approval of recognised qualifications, etc

- (1) The Council may approve any institution for the purposes of this Act and may for those purposes approve-
 - (a) any course of training at any approved institution which is intended for persons seeking to become or are already tax administrators or practitioners and which in the opinion of the Council is designed to confer on persons completing it sufficient knowledge and skill for admission to the Institute.
 - (b) any qualification which, as a result of an examination taken in conjunction with a course of training approved by the Council under this section, is granted to candidates reaching a standard at the examination indicating, in the opinion of the Council, that the candidates have sufficient knowledge and skill to practice as tax administrators or practitioners.
- (2) The Council may, if it thinks fit, withdraw any approval given under this section in respect of any course, qualification or institution; but before withdrawing such an approval, the Council shall-
 - (a) give notice that it proposes to do so to persons in Nigeria appearing to the Council to be persons by whom the course is conducted or the qualification is granted or the institution is controlled, as the case may be;
 - (b) afford each such person an opportunity of making to the Council representations with regard to the proposal; and
 - (c) take into consideration and representations made as respect the proposal in pursuance of paragraph (b) of this subsection.
- (3) A course, qualification or institution shall not be treated as approved during any period the approval is withdrawn under subsection (2) of this section.
- (4) Notwithstanding the provision of subsection (3) of this section, the withdrawal of an approval under subsection (2) of this section shall not prejudice the registration or eligibility for registration of any person who by virtue of the approval was registered or was eligible for registration (either unconditionally or subject to his obtaining a certificate of experience) immediately before the approval was withdrawn.
- (5) The giving or withdrawal of an approval under this section shall have effect from such date, whether before or after the execution of the instrument signifying the giving or withdrawal of the approval, as the Council may specify in the instrument and the Council shall-
 - (a) as soon as may be, publish a copy of every such instrument in the Gazette; and
 - (b) not later than seven days before its publication as aforesaid, send a copy of the instrument to the Minister.

12. Supervision of instruction and examinations leading to approved qualifications

- (1) It shall be the duty of the Council to keep itself informed of the nature of-
 - (a) the instruction given at approved institutions to persons attending approved courses of training; and
 - (b) the examination as a result of which approved qualifications are granted,and for the purpose of performing that duty, the Council may appoint, either from among its own members or any member of the Institute a person to visit approved institutions or evaluate such examinations.
- (2) it shall be the duty of a person appointed under subsection (1) of this section to report to the Council on-
 - (a) the adequacy of the instruction given to persons attending approved courses of training at institutions visited by him;
 - (b) the adequacy of the examinations attended by him; and
 - (c) any other matter relating to the institutions or examinations on which the Council may, either generally or in a particular case, request him to report,but no such person shall interfere or be otherwise involved with the giving of any instruction or the holding of any examination.
- (3) On receiving a report made in pursuance of this section, the Council may, if it thinks fit, and shall, if so required by the institution, send a copy of the report to the person appearing to the Council to be in charge of the institution or responsible for the examinations to which the report relates, requesting that person to make observations on the report to the Council within such period as may be specified in the request, not being less than one month beginning with the date of the request.

PART V

Professional discipline

13. Establishment of Disciplinary Tribunal and Investigating Panel

- (1) There shall be a Tribunal to be known as the Chartered Institute of Taxation of Nigeria Disciplinary Tribunal (in this Act referred to as “the Tribunal”) which shall be charged with the duty of considering and determining any case referred to it by the Investigation Panel established by the following provisions of this section and any other case of which the Tribunal has cognisance under the following provisions of this Act.

- (2) The Tribunal shall consist of the chairman of the Council and six other members of the Council appointed by the Council.
- (3) There shall be a body to be known as the Chartered Institute of Taxation of Nigeria Investigation Panel (in this Act referred to as “the Panel”) which shall be charged with the duty of-
 - (a) conducting a preliminary investigating into any case where it is alleged that a member of the Institute has misbehaved in his capacity as a member or should for any other reason be the subject of proceedings before the Tribunal; and
 - (b) deciding whether the case should be referred to the Tribunal.
- (4) The Panel shall be appointed by the Council and shall consist of four members of the Council and one member who is not a member of the Council.
- (5) The provisions of the Second Schedule to this Act shall, so far as applicable to the Tribunal and Panel respectively, have effect with respect to those bodies.

[Second Schedule]
- (6) The Council may make rules not inconsistent with this Act as to acts which constitute professional misconduct.

14. Penalties for unprofessional conduct

- (1) Where-
 - (a) a person registered under this Act is adjudged by the Tribunal to be guilty of infamous conduct in any professional respect; or
 - (b) a person is convicted, by any court or tribunal in Nigeria or elsewhere having power to award imprisonment, of an offence (whether or not punishable with imprisonment) which in the opinion of the Disciplinary Tribunal is incompatible with the status of a member of the Institute; or
 - (c) the Tribunal is satisfied that the name of any person has been fraudulently enrolled or registered,

the Tribunal may, if it thinks fit, give a direction reprimanding that person or ordering the Registrar to strike his name off the relevant part of the register.
- (2) The Tribunal may, if it thinks fit, defer or further defer its decisions as to the giving of a direction under subsection (1) of this section until a subsequent meeting of the Tribunal; but-
 - (a) no decision shall be deferred under this subsection for periods exceeding two years in the aggregate; and

- (b) no person shall be a member of the Tribunal for the purposes of reaching a decision which has been deferred, unless he was present as a member of the Tribunal when the decision was deferred.
- (3) For the purposes of subsection (1) (b) of this section, a person shall not be treated as convicted as therein mentioned, unless the conviction stands at a time when no appeal or further appeal is pending or may (without extension of time) be brought in connection with the conviction.
- (4) When the Tribunal gives a direction under subsection (1) of this section, the Tribunal shall cause notice of the direction to be served on the person to whom it relates.
- (5) The person to whom a direction relates may, at any time within twenty-eight days from the date of service on him of notice of the direction, appeal against the direction to the Federal High Court and the Tribunal may appear as respondent to the appeal and, for the purpose of enabling directions to be given as to the costs of the appeal and of proceeding before the Court of Appeal, the Tribunal shall be deemed to be a party thereto whether or not it appears on the hearing of the appeal.
- (6) A direction of the Tribunal under subsection (1) of this section shall take effect-
 - (a) where no appeal under this section is brought against the direction within the time limited for the appeal, on the expiration of that time;
 - (b) where such an appeal is brought and is withdrawn or struck out for want of prosecution, on the withdrawal or striking out of the appeal;
 - (c) where any such an appeal is brought and is not withdrawn or struck out as aforesaid, if and when the appeal is dismissed,

and shall not take effect in accordance with the foregoing provisions of this subsection.

(7) A person whose name is struck off the register in pursuance of a direction of the Tribunal under this section, shall not be entitled to be enrolled or registered again except in pursuance of a direction in that behalf; and a direction under this section for the striking off a person's name from the register, may prohibit an application under this subsection by that person until the expiration of such period from the date of the direction (and where he has duly made such an application, from the date of his last application) as may be specified in the direction.

PART VI

Miscellaneous

15. Application of this Act to unregistered persons

Any person who is not a member of the Nigerian Institute of Taxation (in this Act referred to as "the former Institute") who, but for this Act, would have been qualified to apply for and obtain membership of the former Institute may, within the period of three months beginning from the

commencement of this Act, apply for the membership of the Institute in such a manner as may be prescribed by the Council; and if approved, he shall be enrolled or, as the case may be, registered, according to his qualification.

16. When a person is deemed to practice as a member

- (1) Subject to subsection (2) of this section, a person shall be deemed to practice as a member of the Institute if, in consideration of remuneration received or to be received and whether by himself or in partnership with any other person:
 - (a) he engages himself in the practice of taxation or holds himself out to the public as a member of the Institute; or
 - (b) he renders professional service or assistance in or about matters of principle or detail relating to taxation procedure; or
 - (c) he renders any other service which may by regulations made by the Council, with the approval of the Minister, be designed as service constituting tax practice.
- (2) Nothing in this section shall be construed so as to apply to persons who, while in the employment of any Government, are required under the terms or in the course of such employment, to perform the duties or any of the duties of a tax administrator or practitioner.

17. Rules as to practice, etc

- (1) The Council may make rules-
 - (a) for the training of suitable persons in taxation administration, methods and practice; and
 - (b) for the supervision and regulation of the engagement, training and transfer of such persons.
- (2) The Council may also make rules-
 - (a) prescribing the amount and due date for the payment of the annual subscription, and for such purposes different amounts may be prescribed by the rules according to whether the person is registered as a fellow, associate member, graduate member or student member;
 - (b) prescribing the form of licence to practice to be issued annually or, if the Council thinks fit, by endorsement on an existing licence; and
 - (c) restricting the right to practice in default of payment of the amount of the annual subscription where the default continues for longer than such period as may be prescribed by the rules.
- (3) Rules when made under this section shall, if the chairman of the Council so directs, be published in the Gazette.

18. Provision of library facilities, etc

- (1) The Institute shall-
 - (a) Provide and maintain a library comprising books and publications for the advancement of knowledge of tax practice and such other books and publications as the Council may think necessary for the purpose;
 - (b) Encourage research into taxation procedure and allied taxation, subject to the extent that the Council may, from time to time, consider necessary.

19. Offences

- (1) If any person, for the purpose of procuring the registration of any name, qualification or other matter-
 - (a) makes a statement which he believes to be false in a material particular; or
 - (b) recklessly makes a statement which is false in a material particular,
 - (c) he shall be guilty of an offence.
- (2) If, on or after the relevant date, any person who is not a member of the Institute practices or holds himself out to practice as a tax administrator or practitioner for or in expectation of reward or takes or uses any name, title, addition or description implying that he is in tax practice, he shall be guilty of an offence; provided that, in the case of a person falling within section 15 of this Act-
 - (a) this subsection shall not apply in respect of anything done by him during the period of three months mentioned in that section; and
 - (b) if within that period he duly applies for membership of the Institute then, unless within that period he is notified that his application has not been approved, this subsection shall not apply in respect of anything done by him between the end of that period and the date on which he is registered or is notified as aforesaid.
- (3) If the Registrar or any other person employed by or on behalf of the Institute wilfully makes any falsification in any matter relating to the register, he shall be guilty of an offence.
- (4) A person guilty of an offence under this section shall be liable-
 - (a) on summary conviction, to a fine of an amount not exceeding ₦100;
 - (b) on conviction on indictment, to a fine of an amount not exceeding ₦1,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.
- (5) Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of any director, manager, secretary or other similar officer of the body corporate

or any person purporting to act in such capacity, he as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

- (6) In this section, “**the relevant date**” means the third anniversary of coming into force of this Act or such earlier date as may be prescribed for the purposes of this section by order of the Minister published in the *Gazette*.

20. Regulations and rules

- (1) Any regulation made under this Act, shall be published in the Gazette as soon as may be after they are made and a copy of such regulation shall be sent to the Minister not later than 7 days before they are so published.
- (2) Rules made for the purposes of this Act shall be subject to confirmation in the Institute at its next general meeting or at any special meeting of the Institute convened for that purpose, and if then annulled, shall cease to have effect on the day after the date of annulment, but without prejudice to anything done in pursuance or intended pursuance of any such rules.

21. Dissolution of the Nigerian Institute of Taxation and transfer of certain property, etc

- (1) The body known as the Nigerian Institute of Taxation (in this Act referred to as “the former Institute”) is hereby dissolved.
- (2) Accordingly, all the property held by or on behalf of the former Institute shall by virtue of this section and without further assurance, vest in the Institute and be held by it for the purposes of the Institute.
- (3) The provisions of the Third Schedule to this Act shall have effect with respect to matters arising from the transfer by this section to the Institute of the property of the former Institute and with respect to other matters mentioned in that Schedule.

[Third Schedule]

22. Interpretation

In this Act, unless the context otherwise requires-

“**Council**” means the Council established as the governing body of the Institute under section 4 of this Act;

“**fees**” means annual subscription;

“**former Institute**” means the Nigerian Institute of Taxation dissolved by section 2 (1) of this Act;

“**Institute**” means the Chartered Institute of Taxation of Nigeria established under section 1 of this Act;

“**member of the Institute**” means a registered fellow member, associate member, graduate

member, or student member of the Institute and membership of the Institute shall be construed accordingly;

“**Minister**” means the Minister charged with the responsibility of matters relating to taxation;

“**Panel**” means the Chartered Institute of Taxation of Nigeria Investigating Panel established under section 13 of this Act;

“**President and Vice-President**” means respectively the office-holders under those names in the Institute;

“**profession**” means the profession of taxation

“**register**” means the register maintained in pursuance of section 8 of this Act;

“**registered**” in relation to a fellow, an associate member or a graduate member means registered in the part of the register relating to fellow, associate member or graduate member as the case may be;

“**tax administrator**” means any person employed as a tax administrator;

“**tax practitioner**” means any person who is registered or entitled to be registered under this Act in any of the categories of membership;

“**Tribunal**” means the Chartered Institute of Taxation Disciplinary Tribunal established under section 13 of this Act;

23. Short title

This Act may be cited as the Chartered Institute of Taxation of Nigeria Act

SCHEDULES

FIRST SCHEDULE

[Section 4 (3)]

Supplementary provisions relating to the Council

Qualifications and tenure of office members of the Council

1.
 - (1) Subject to the provisions of this paragraph, a member of the Council shall hold office for a period of three years beginning with the date of his appointment or election.
 - (2) Any member of the Institute who ceases to be a member thereof shall, if he is also a member of the Council, cease to hold office on the Council.
 - (3) Any member of the Council may, by notice in writing under his hand addressed to the President, resign his office.
 - (4) A person who retires from or otherwise ceases to be an elected member of the Council, shall be eligible again to become a member of the Council, and any appointed member may be re-appointed except if such member has been convicted of any criminal offence.
 - (5) Members of the Council shall its next meeting before the general meeting of the Institute arranges for five elected members of the Council who are longest in office to retire at that general meeting, with the exception of existing members of the Council as at the Commencement of this Act.
 - (6) Elections to the Council shall be held in such manner as may be prescribed by rules made by the Council and, until so prescribed, they shall be decided by secret ballot.
 - (7) If for any reason a member of Council vacates office and-
 - (a) such member was appointed by the Minister or any other body, the Minister or that body may appoint another fit person to fill that vacancy; or
 - (b) such member was elected, the Council may, if the time between the unexpired portion of the term of office and the next general meeting of the Institute appears to warrant the filling of the vacancy, co-opt a fit person for such time as aforesaid.

Proceedings of the Council

2.

- (1) Subject to the provisions of this Act, the Council may in the name of the Institute make standing orders regulating its proceedings or proceedings of its committees or any committee thereof.
 - (2) Standing orders shall provide for decisions to be taken by a majority of the members and in the event of equality of votes, the President or the chairman shall have a second or casting vote.
 - (3) Standing orders made for a committee shall provide for the committee to report back to the Council on any matter referred to it by the Council.
3. The quorum of the Council shall be five and the quorum of a committee of the Council shall be fixed by the Council.

Meeting of the Institute

4.

- (1) The Council may convene the meeting of the Institute on 30 April in every year or on such other day as the Council may from time to time, appoint, so however, that if the meeting is not held within one year after the previous meeting, not more than fifteen months shall elapse between the respective dates of the two meetings.
- (2) A special meeting of the Institute may be convened by the council at any time and if not less than twenty members of the Institute so require, by notice in writing addressed to the chairman of the council setting out the object of the proposed meeting, the chairman of the council shall convene a special meeting of the institute.
- (3) The quorum of any meeting of the Institute shall be twenty members and that of any special meeting of the institute shall be fifteen members.

Meeting of the Council

5.

- (1) Subject to the provisions of any standing orders of the Council, the Council shall meet whenever it is summoned by the chairman and, if the chairman is required to do so by notice in writing given to him by not less than five other members, he shall summon a meeting of the Council to be held within fourteen days from the date on which the notice is given.

- (2) At any meeting of the Council the chairman shall preside and in his absence the vice chairman shall preside; but if both are absent, the members present at the meeting shall appoint one of their members to preside at the meeting.
- (3) Where the Council desires to obtain the advice of any person on a particular matter, the Council may co-opt him as a member for such period as the Council thinks fit, but a person who is a member by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the council and shall not count towards a quorum.
- (4) Notwithstanding anything in the foregoing provisions of this paragraph, the first meeting of the Council shall be summoned by President of the institute.

Committees

6.

- (1) The Council may appoint one or more committees to carry out on behalf of the Institute or the Council such functions as the Council may determine.
- (2) A committee appointed under this paragraph shall consist of the number of persons determined by the Council and not more than two thirds of the persons may be persons who are not members of the Council.
- (3) A person other than a member of the Council shall hold on the committee in accordance with the terms of the letter by which he is appointed.
- (4) A decision of a committee of the Council shall be of no effect until is confirmed by the Council.

Miscellaneous

7.

- (1) The fixing of the seal of the Institute shall be authenticated by the signature of the chairman or of some other member of the Council authorised generally or specially by the Council to act for that purpose.
- (2) Any contract or instrument which, if made or executed by a person under the seal, may be made or executed on behalf of the Institute or of the Council, as the case may require, by any person generally or specially authorised to act for that purpose by the council.
- (3) Any document purporting to be a document duly executed under the seal of the institute shall be received in evidence and shall, unless the contrary is proved, be deemed to be executed.

8. The validity of any proceedings of the Institute or the Council or of a committee of the Council shall not be adversely affected by any vacancy in membership or by any defect in the appointment of a member of the Institute or of the Council or of a person to serve on the committee or by reason that a person not entitled to do so took part in the proceedings.
9. Any member of the Institute or the Council and any person holding office on a committee of the Council, who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Council on behalf of the Institute or on behalf of the Council thereof, shall forthwith disclose his interest to the President or to the Council, as the case may be, and shall not vote on any question relating to the contract or arrangement.
10. A person shall not by reason only of his membership of the Institute or the Council be treated as holding an office in the public service of the federation.

SECOND SCHEDULE

Supplementary provisions relating to the Disciplinary Tribunal and Investigative Panel of the Tribunal

[Section13.]

The Disciplinary Tribunal

1. The quorum of the Disciplinary Tribunal shall be four members.
2.
 - (1) The Attorney-General of the Federation shall make rules as to the selection of members of the Disciplinary Tribunal for the purpose of any proceeding, the procedure to be followed and the rules of evidence to be observed in proceedings before the Disciplinary Tribunal.
 - (2) The rules shall in particular provide -
 - (a) for securing that notice of the proceedings shall be given at such time in such manner as may be specified by the rules, to the person who is the subject of the proceedings;
 - (b) for determining who, in addition to the person aforesaid, shall be a party to the proceedings;
 - (c) for securing that any party to the proceedings shall, if he so requires, be entitled to be heard by the Disciplinary tribunal;
 - (d) for securing that any party to the proceedings may be represented by a legal practitioner;

- (e) subject to the provisions of section 14 (5) of this Act, as to the costs of proceedings before the Disciplinary tribunal;
 - (f) for requiring, in a case where it is alleged that the person who is subject of proceedings is guilty of infamous conduct in any professional respect, that where the disciplinary Tribunal adjudges that the allegation has not been proved it shall record a finding that the person is not guilty of such conduct in respect of the matters to which the allegation relates; and
 - (g) for publishing in the *Gazette* notice of any direction of the Disciplinary tribunal which has taken effect providing that a person's name shall be struck off a register.
3. For the purposes of any proceedings before the Disciplinary Tribunal, any member of the Disciplinary Tribunal may administer oaths and any party to the proceedings may sue out of the registry of the Federal High Court writs of *subpoena ad testificandum* and *duces tecum*; but no person appearing before the Disciplinary Tribunal shall be compelled-
- (a) to make any statement before the Disciplinary Tribunal tending to incriminate himself; or
 - (b) to produce any documents under such a writ which he could not be compelled to produce at the trial of an action.
- 4.
- (1) For the purpose of advising the Disciplinary Tribunal on question of law arising in proceedings before it, there shall be assessor to the Disciplinary Tribunal who shall be appointed by the Council on the recommendation of the Attorney- General of the Federation and shall be a legal practitioner of not less than seven years' standing.
 - (2) The Attorney-General of the Federation shall make rules as to the functions of assessors appointed under this paragraph and in particular such rules shall contain provisions for securing-
 - (a) that where an assessor advises the Disciplinary Tribunal on any question of law as to evidence, procedure or any other matter specified by the rules, he shall do so in the presence of every party or person representing a party to the proceeding who appear thereat or, if the advice is tendered while the Disciplinary Tribunal is deliberating in private, that every such party or person as aforesaid shall be informed what advice the assessor has tendered; and
 - (b) that every such party or person as aforesaid shall be informed in case the Disciplinary Tribunal does not accept the advice of the assessor on such a question as aforesaid.
 - (3) An assessor may be appointed under this paragraph either generally or for any particular proceedings or class of proceedings and shall hold and vacate office in accordance with the terms of the letter by which he is appointed.

The Investigating Panel

5. The quorum of the Investigating panel shall be three.
6.
 - (1) The Investigating Panel may, at any of its meetings attended by all the members of the Investigating Panel, make standing orders with respect to the Investigating Panel.
 - (2) Subject to the provision for any such standing orders, the Investigating panel may regulate its own procedure.

Miscellaneous

7.
 - (1) A person ceasing to be a member of the Disciplinary Tribunal or the Investigating Panel shall be eligible for appointment as a member of the Disciplinary Tribunal or Investigating Panel, as the case may be.
 - (2) A person may, if otherwise eligible, be a member of both the Disciplinary Tribunal and the Investigating Panel; but no person who acted as a member of the Investigating Panel with respect to that case.
8. The Disciplinary Tribunal or the Investigating Panel may act notwithstanding any vacancy in its membership, and the proceedings of either body shall not be invalidated by any irregularity in the appointment of a member of that body or, subject to paragraph 7(2) of this schedule, by reason of that fact that any person who was not entitled to do so took part in the proceedings of that body.
9. Any document authorised or required by virtue of this Act to be served on the Disciplinary Tribunal or the Investigating Panel shall be served on the Registrar.
10. Any expense of the Disciplinary Tribunal or the Investigation Panel shall be defrayed by the Institute.

THIRD SCHEDULE

Transitional provisions as to assets and liabilities

[Section 21 (3).]

Transfer of property

1. Without prejudice to the generality of section 21 of this Act, all the assets and liabilities of the former Institute shall become assets and liabilities of the Institute.
2.
 - (1) All agreements, contracts, deeds or other instruments to which the former Institute was a party shall, so far as possible and subject to any necessary modifications, have effect as if the Institute has been a party thereto in place of the former Institute.
 - (2) Documents not falling within sub-paragraph (1) of this paragraph, including enactments which refer, whether specially or generally to the former Institute, shall be construed in accordance with that sub-paragraph as far as possible.
 - (3) Any legal proceedings to any authority pending on the day this Act comes into force by or against former Institute and relating to property transferred to the Institute by this Act, may be continued on or after that day by or against the Institute.

Registration on transfer

3. If law in force at the place where any property transferred by this Act is situate provides for the registration of transfer of property of the kind in question (whether by reference to any instrument of transfer or otherwise), the law shall so far as it provides for alteration of a register (but not for avoidance),the law shall so far as it provides for alteration of a register (but not for avoidance of transfer, the payment of fees or any other matter) apply with the necessary modification to the property aforesaid and it shall be the duty of the council to furnish the necessary particulars of the transfer to proper the proper office of the registration authority and of that officer to register the transfer accordingly.

Transfer of functions, etc

4.
 - (1) As soon as may be after the commencement of this Act, the President shall summon a general meeting to elect the Institute's representatives on the Council of the Institute.
 - (2) The persons who were members of the Council of the former Institute immediately before the commencement of this Act shall be deemed to be members of the Council of the Institute

until the date when the Council established by this Act is duly constituted.

- (3) Any person who, immediately before the commencement of this Act, held office as the President or Vice-President of the Council of the former Institute by virtue of the articles of association of the former Institute shall on the day this Act comes into force become the President or Vice-President, as the case may be, of the Institute, and shall be deemed-
 - (a) to have been appointed to that office in pursuance of the relevant provisions of this Act corresponding to the relevant provisions in the said articles of association; and
 - (b) to have been so appointed on the date on which he took or last took office, in pursuance of the relevant provisions of those articles.
- (1) The persons who were members of the former Institute shall, as from the commencement of this Act, be registered as members of the Institute, and, without prejudice to the generality of the provisions of this Schedule relating to the transfer of property.
- (2) Any person who was an employee of the Council of the former Institute or was otherwise employed by the former Institute shall become the holder of an appointment in the Council or Institute, as the case may be, with the status, designation and functions which correspond as nearly as may be those which appertained to him as such employee.
- (3) All regulations, rules and similar instruments made for the purposes of the former Institute and in force immediately before the coming into force of this Act shall, except in so far as they are subsequently revoked or amended by any authority having power in that behalf, have effect with any necessary modifications, as if duly made for the corresponding purposes of the Institute.

CHAPTER C21

COMPANIES INCOME TAX ACT
ARRANGEMENT OF SECTIONS

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[Repealed]

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CHAPTER C21

COMPANIES INCOME TAX ACT

An Act to consolidate the provisions of the Companies Income Tax Act 1961 and to make other provisions relating thereto.

[1979 No. 28, 2007 No. 56.]

[Commencement.] [1st April, 1979]

PART I

(Repealed by 2007 No. 56, s. 2 (1).)

PART II

Imposition of tax and profits chargeable

9. Charge of tax

- (1) Subject to the provisions of this Act, the tax shall, for each year of assessment, be payable at the rate specified in subsection (1) of section 40 of this Act upon the profits of any company accruing in, derived from, brought into, or received in, Nigeria that are not subject to tax under the Capital Gains Tax Act, Petroleum Profits Tax Act and Personal Income Tax Act, such profits shall include -

[2019 No. 1, s. 2]

- (a) any trade or business for whatever period of time such trade or business may have been carried on;
- (b) rent or any premium arising from a right granted to any other person for the use or occupation of any property; and where any payment on account of such a rent as is mentioned in this paragraph is made before the expiration of the period to which it relates and is included for the purposes of this paragraph in the profits of a company, then, so much of the payment as relates to any period beginning with the date on which the payment is made shall be treated for these purposes as accruing to the company proportionately from day to day over the last-mentioned period or over the five years beginning with that date, whichever is the shorter;
- (c) dividends, interests, royalties, discounts, charges or annuities;

[1993 No. 3.]

- (d) for the purposes of this Act-

- (i) interest includes compensating payments received by a borrower from its approved

agent or a lender in a Regulated Securities Lending Transaction provided that the underlying transaction giving rise to the compensating payment is a receipt of interest by a lender on the collateral it received from its approved agent or a borrower in a Regulated Securities Exchange Transaction,

- (ii) “Dividends includes compensating payments received by a lender from its approved agent or borrower in a Regulated Securities Lending Transaction.”

[2021 No. 1, s. 3]

- (e) any source of annual profits or gains not falling within the preceding categories;
- (f) any amount deemed to be income or profit under a provision of this Act or, with respect to any benefit arising from a pension or provident fund, of the Personal Income Tax Act;
[Cap. P8.]
- (g) fees, dues and allowances (wherever paid) for services rendered;
- (h) any amount of profits or gains arising from acquisition and disposal of short term money instruments like Federal Government securities, treasury bills, treasury or savings certificates, debenture certificates or treasury bills, treasury or savings certificates, debenture certificates or treasury bonds:

[1991 No. 63.]

Provided that for the purpose of this section, securities or shares shall not be deemed to be disposed of by a lender, borrower or approved agent or acquired by a borrower, approved agent or lender if such securities or shares are transferred from a lender and subsequently returned by a borrower in a Regulated Securities Lending Transaction

[2019 No. 1, s. 2]

- (i) Profits from securities lending other than compensating payments to the lender or borrower

[2019 No. 1, s. 2]

- (2) For the purposes of this section, interest shall be deemed to be derived from Nigeria if-
 - (a) there is a liability to payment of the interest by a Nigerian company or a company in Nigeria regardless of where or in what form the payment is made; or
 - (b) the interest accrues to a foreign company or person from a Nigerian company or a company in Nigeria regardless of whichever way the interest may have accrued.

- (3) In this section, “**dividend**” means-

- (a) in relation to a company not being in the process of being wound up or liquidated, any profits distributed, whether such profits are of a capital nature or not, including an amount equal to the nominal value of bonus shares, debentures or securities awarded to the shareholders; and
- (b) in relation to a company that is being wound up or liquidated, any profits distributed, whether in money or money's worth or otherwise, other than those of a capital nature earned before or during the winding-up or liquidation.

10. Identification of a company

- (1) Every company shall have a tax identification number (TIN), which shall be displayed by the company on all business transactions with other companies and individuals and on every document, statement, returns, audited account and correspondence with revenue authorities, including the Federal Inland Revenue Service, Ministries and Government Agencies.
- (2) Every person engaged in banking or other financial services in Nigeria shall require all companies to provide their TIN as a precondition for opening a bank account or, in the case of an account already opened within three months of the passage of this Act, the bank shall require such TIN to be provided by all companies as a precondition for continued operation of their bank accounts.

[2019 No. 1, s. 3]

11. Charge of tax on interest relating to foreign and agricultural loans, and certain reliefs

- (1) Interest payable on any foreign loan granted on or after 1 April, 1978 shall be exempted from tax as prescribed in Table I in the Third Schedule to this Act.

[Subsection (1), previously subsection (6), renumbered by 2007 No. 56, s. 3 (a).]

- (2) Interest on any loan granted by a bank on or after 1 January 1977 to a company engaged in-

- (a) primary agricultural production, or

[2020 No. 1, s. 6]

- (b) the fabrication of any local plant and machinery; or

- (c) providing working capital for any cottage industry established by the company,

[2007 No. 56, s. 3 (b).]

shall be exempted from tax, provided the moratorium is not less than 12 months and the rate of interest on the loan is not more than the base lending rate at the time the loan was granted, refinanced or otherwise restructured.

[2020 No. 1, s. 6]

- (3) For the purpose of subsection (7) of this section, where a bank grants a loan to a company, it shall disclose to the Service the following information-

- (a) the amount of the loan;
- (b) the moratorium;
- (c) the date repayment is due to commence;
- (d) the amount of repayment, showing capital and interest; and
- (e) the full particulars of the recipient of the loan and its permanent address.

[1991 No. 63. Subsection (3), previously subsection (8), renumbered by 2007 No. 56, s. 3 (a).]

(4) In this section-

“primary agricultural production” means-

- (a) primary crop production comprising the production of raw crops of all kinds, but excluding any intermediate or final processing of crops or any other associated manufactured or derivative crop product;
- (b) primary livestock production comprising the production of live animals and their direct produce such as live or raw meat, live or raw poultry, fresh eggs and milk of all kinds, but excluding any other associated manufactured or derivative livestock product;
- (c) primary forestry production comprising the production of timbers of various kinds such as firewood, charcoal, uncultivated materials gathered and other forestry products of all kinds, including seeds and saplings, but excluding the intermediate and final processing of timber and any other manufactured or derivative timber product; and
- (d) primary fishing production comprising the production of fish of all kinds, including ornamental fish, but excluding any intermediate or final processing of any other manufactured or derivative fish product.

[2020 No. 1, s. 6]

- (5) Interest payable on any loan granted by a bank on or after 1 April, 1980 for the purpose of manufacturing goods for export, shall be exempted from tax on the presentation of a certificate issued by the Nigerian Export Promotion Council stating that the level of export specified has been achieved by the company. A company shall be deemed to be engaged in manufacturing for export if the Nigerian Export Promotion Council certifies that no less than one half of its manufactured goods disposed of in its year of account is sold outside Nigeria and is not reexported to Nigeria.

[Subsection (5), previously subsection (10), renumbered by 2007 No. 56, s. 3 (a).]

12. Full disclosure or agreement to be made

Any company entering into any agreement (whether oral or written) in respect of any service

under paragraph (J) of section 9 (1) of this Act shall forthwith make a full disclosure to the Service in writing of the terms of such agreement.

13. Nigerian companies

(1) The profits of a Nigerian company shall be deemed to accrue in Nigeria wherever they have arisen and whether or not they have been brought into or received in Nigeria.

(2) The profits of a company other than a Nigerian company from any trade or business shall be deemed to be derived from or taxable in Nigeria where-

[2021 No. 1, s. 4.]

- (a) that company has a fixed base of business in Nigeria to the extent that the profit is attributable to the fixed base;
- (b) it does not have such a fixed base in Nigeria but habitually operates a trade or business through a person in Nigeria authorised to conduct on its behalf or on behalf of some other companies controlled by it or which have a controlling interest in it; or habitually maintains a stock of goods or merchandise in Nigeria from which deliveries are regularly made by a person on behalf of the company, to the extent that the profit is attributable to the business or trade or activities carried on through that person;
- (c) it transmits, emits or receives signals, sounds, messages, images or data of any kind by cable, radio, electromagnetic systems or any other electronic or wireless apparatus to Nigeria in respect of any activity, including electronic commerce, application store, high frequency trading, electronic data storage, online adverts, participative network platform, online payments and so on, to the extent that the company has significant economic presence in Nigeria and profit can be attributable to such activity;
- (d) that trade or business or activities involves a single contract for surveys, deliveries, installations or construction, the profit from that contract;
- (e) the trade or business comprises the furnishing of technical, management, consultancy or professional services outside of Nigeria to a person resident in Nigeria to the extent that the company has significant economic presence in Nigeria;

Provided that the withholding tax applicable to the income under this paragraph shall be the final tax on the income of a non-resident recipient who does not otherwise fall within the scope of subsection (2) (a)-(d); or

[2020 No. 1, s. 7]

- (f) the trade or business or activities is between the company and another person controlled by it or which has a controlling interest in it and conditions are made or imposed between the company and such person in their commercial or financial relations which in the opinion of the Board is deemed to be artificial or fictitious, so much of the

profit adjusted by the Board to reflect arm's length transaction.”

[2021 No. 1, s. 4.]

(3) For the purpose of subsection (2) (a) of this section a fixed base shall not include facilities used solely for the-

(a) storage or display of goods or merchandise;

(b) collection of information.

[1993 No. 3.]

(4) For the purpose of subsection (2) (c) and (f), the Minister may by order, determine what constitutes the significant economic presence of a company other than a Nigerian company.

[2019 No. 1, s. 4]

14. Companies engaged in shipping or air transport

(1) Where a company other than a Nigerian company carries on the business of transport by sea or air, and any ship or aircraft owned or chartered by it calls at any port or airport in Nigeria, its profits or loss to be deemed to be derived from Nigeria shall be the full profits or loss arising from the carriage of passengers, mails, livestock or goods shipped, or loaded into an aircraft, in Nigeria:

Provided that this subsection shall not apply to passengers, mails, livestock or goods which are brought to Nigeria solely for trans-shipment or for transfer from one aircraft to another or in either direction between an aircraft and a ship.

(2) For the purposes of the preceding subsection, where the Service is satisfied that the taxation authority of any other country computes and assesses on a basis not materially different from that prescribed by this Act the profits of a company which operates ships or aircraft, and that authority certifies-

(a) the ratio of profits or loss, before any allowance by way of depreciation, of an accounting period to the total sums receivable in respect of the carriage of passengers, mails, livestock or goods; and

(b) the ratio of allowances by way of depreciation for that period to that same total,

then the full profits or loss of that period shall be taken to be that proportion of the total sums receivable in respect of the carriage of passengers, mails, livestock or goods shipped or loaded in Nigeria which is produced by applying the first mentioned ratio to that total, and in place of any allowances to be given under the provisions of the Second Schedule there shall be allowed the amount produced by applying the second-mentioned ratio to that same total.

[Second Schedule.]

(3) Where at the time of assessment, the provisions of subsection (2) of this section cannot for any reason be satisfactorily applied, the profits to be deemed to be derived from Nigeria may

be computed on a fair percentage on the full sum receivable in respect of the carriage of passengers, mails, livestock and goods shipped or loaded in Nigeria:

Provided that where any company has been assessed for any year by reference to such percentage, it shall be entitled to claim at any time within six years after the end of such year that its liability for that year be re-computed on the basis provided by sub section (2) of this section; and where such claim has been made and a certificate has been produced to the satisfaction of the Service as provided in that subsection, such repayment of tax shall be made as may be necessary to give effect to this proviso, save that, if the company fails to agree with the Service as to the amount of the tax to be so re-computed and re-paid, the Service shall give notice to the company of refusal to admit the claim and the provisions of this Act with respect to objections and appeals shall apply accordingly with any necessary modifications.

- (4) For the purposes of this section, the tax payable by any company for any year of assessment shall not be less than two percent of the full sum receivable in respect of the carriage of passengers, mails, livestock or goods shipped or loaded into an aircraft in Nigeria.

(4A) Notwithstanding the provisions of any other section of this Act, where any company files tax returns under the provisions of subsection (3) of this section and does not provide a separate financial statement of the Nigerian operations, for the purpose of filing its tax returns, such company shall submit detailed gross revenue statements of its Nigerian operations, showing the amount of full sums earned during the period, certified by one of the company's directors as well as their company's external auditor and supported with all invoices issued to the relevant customers.

[2023 No. 1, s.5]

- (5) The provisions of this section does not apply to income from leasing, containers, non-freight operations or any other incidental income liable to tax under section 9 of this Act.

[2020 No. 1, s. 8]

- (6) Regulatory agencies in the shipping and air transport and other relevant sectors shall mandate all companies taxable under the provisions of subsection (1) of this section to present the following-

- (a) Evidence of income tax filling for the preceding year; and
- (b) Tax Clearance Certificate, showing income taxes paid for the three preceding tax years, in order to continue to carry on business in Nigeria or obtain any relevant approvals and permit.

[2023 No. 1, s.5]

15. Cable undertakings

Where a company other than a Nigerian company carries on the business of transmission of messages by cable or by any form of wireless apparatus, it shall be assessable to tax as though it operates ships or aircraft, and the provisions of the preceding section shall apply *mutatis mutandis* to the computation of its profits deemed to be derived from Nigeria as though the transmission of

messages to places outside Nigeria were equivalent to the shipping or loading of passengers,, mails, livestock or goods in Nigeria.

16. Insurance companies

(1) An insurance business shall be taxed as-

[2021 No. 1, s. 5]

(a) A general insurance company, whether proprietary or mutual, other than a life insurance company; or

(b) a life insurance company

Provided that the profit on which tax may be imposed for an insurance business shall be in accordance with section 13 of this Act.

(2) For a general insurance company, the profit on which tax may be imposed, shall be ascertained by taking the gross premium and other income receivable, less reinsurance, and deducting from the balance so arrived at, a reserve for unexpired risks, determined in accordance with subsection (10) (a), of this section.

[2021 No. 1, s. 5]

(3) For a life insurance company, the profits on which tax may be imposed shall be the investment income less the management expenses, including commission.

[2021 No. 1, s. 5]

(4) Any amount distributed in any form as dividend from an actuarial revaluation of unexpired risks or from any other revaluation shall be deemed to be part of the total profits of the company for tax purposes.

[2021 No. 1, s. 5]

(5) Not more than three months after an actuarial revaluation of unexpired risks or any other revaluation has taken place, the company shall provide the Service with full particulars of the revaluation carried out, including a copy of the actuary's revaluation certificate.

[2021 No. 1, s. 5]

(6) The profits on which tax may be imposed -

(a) in a general Nigerian insurance company, shall be ascertained in accordance with the provisions of subsection (2) as though the whole premium and investment incomes of the company were derived from Nigeria; and

(b) in a Nigerian life insurance company, shall be ascertained in accordance with the provisions of subsections (3), (4) and (5) as though the whole investment and other incomes were received in Nigeria and all the expenses and other outgoings of the company were incurred in Nigeria.

[2021 No. 1, s. 5]

(7) Investment income for the purpose of taxation of a life insurance company under this section means income derived from investment of shareholders' funds.

- (8) Where an insurance company carries on a life class and a general or non-life class insurance business, the funds and books of accounts of one class shall be kept separate from the other as though one class does not relate to the other class, and the annual tax returns of the two classes of insurance businesses shall be made separately
- (9) Each class of insurance shall be assessed separately as “life insurance assessment” and “nonlife (other) insurance assessment” and in respect of each class of insurance business where there are more than one type of insurance and in the same class, they form one type of business and shall not be allowed against the income from another type of insurance business but the loss shall be available to be carried forward against profits from the same class of insurance business.
- (10) An insurance company, other than a life insurance company, shall be allowed as deductions from its premium the following reserves for tax purposes-
- (a) Reserve for unexpired risks, calculated on a time apportionment basis of the risks accepted in the year; and
 - (b) For outstanding claims and outgoings, an amount equal to the total estimated amount of all outstanding claims and outgoings, provided that any amount not utilised towards settlement of claims and outgoings shall be added to the total profits of the following year.
- (11) An insurance company, in respect of its life insurance business shall be allowed the following deductions from its investment incomes and other incomes-
- (a) an amount which makes a general reserve and fund equal to the net liabilities on policies in force at the time of an actuarial valuation;
 - (b) an amount which is equal to 1% of gross premium or 10% of profits (whichever is greater) to a special reserve fund and accommodation until it becomes the amount of the statutory minimum paid-up capital; and
 - (c) All normal allowable business outgoings.
- (12) A reinsurance company shall be allowed the following deductions from its gross profit to be credited to a general reserve fund-
- (a) an amount not more than 50% of the gross profits of the reinsurer for the year where the general reserve fund is less than the initial statutory minimum authorised share capital; or
 - (b) an amount not more than 25% of the gross profits of the reinsurer for the year, where the fund is equal to or exceeds the initial statutory minimum authorised share capital.
- [2021 No. 1, s. 5]
- (13) An insurance company that engages the services of an insurance agent, a loss adjuster and an insurance broker shall include in its annual tax returns, a schedule showing the name and

address of that agent, loss adjuster and insurance broker, the date their services were employed and terminated, as applicable, and payments made to each such agent, loss adjuster and insurance broker for the period covered by the tax returns.

[2021 No. 1, s. 5]

- (14) the provisions on minimum tax in section 33 of this act shall apply to insurance business, provided that “gross turnover” shall mean “gross premium and other income” in the case of non-life insurance business and ”gross income”, in the case of life insurance business.

[2021 No. 1, s. 5]

- (15) For the purpose of subsection (14)-

“gross premium” means the total premiums written, received and receivable excluding unearned premium and premiums returned to the insured; and

“gross income” means total income earned by a life insurance business including all investment income (excluding franked investment income), fees, commission and income from other assets but excluding premiums received and claims paid by re-insurers and

“other income” , for the purposes of non life insurance businesses means all the income of the non-life insurance business other than gross premium (excluding franked investment income)”

[2021 No. 1, s. 5]

17. Authorised unit trust scheme

- (1) Where under any of the provisions of the Investments and Securities Act, a unit trust scheme is established for the purpose of providing facilities for the participation of the public, as beneficiaries under a trust, in profits or income arising from acquisition, holding, management or disposal of securities or any other property whatsoever, this Act shall, in respect of the income arising to the trustees of an authorised unit trust, have effect-

[Cap. 124.1

- (a) as if the trustees were a company whose business consists mainly in the making of investments and the principal part of whose income is derived therefrom;
- (b) as if the rights of the unit holders were shares in the company; and
- (c) as if so much of the income accruing to the trustees as is available for payment to the unit holders were dividends on such shares

and reference in this Act to a company shall be construed in accordance with this subsection.

[1991 No. 63.]

- (2) For the purpose of section 32 of this Act, the profits of an authorised unit scheme, on which tax, may be imposed, shall be ascertained by taking the income accruing to the trustees from all sources of the investment of the unit trust and deducting there from sums disbursed as management expenses, including remuneration for the managers.

[1991 No. 63.]

- (3) Where the trustees of a unit trust receive a payment on which the unit trust suffers tax by deduction (not being franked investment income), the tax thereon shall be set off against any income on the trustees by an assessment made for the year of assessment in which the receipt, on which the tax deduction was made, falls to be taken into account in ascertaining the tax payable by the unit trust for the year of assessment.

[1991 No. 63.]

- (4) The provisions of section 53 of this Act shall apply to a dividend accruing to the trustees of a unit trust.

[1991 No. 63.]

- (5) So much of the profit accruing to the trustees of a unit trust as is available for payment to unit holders or for investment shall be deemed to be dividends paid or payable by the trustees to the unit holders in proportion to their rights, and the provisions of section 21 of the Personal Income Tax Act shall apply to a dividend paid or payable to any member of an authorised unit trust.

[1991 No. 63. Cap. P8.]

- (6) In this section-

“authorised unit trust” means, as respect a year of assessment, a unit trust scheme that is authorised by the Commission under section 125 of the Investment and Securities Act to carry on the business of dealing in a unit trust scheme;

[Cap. 124.]

“unit trust scheme” means any arrangement made for the purpose of providing facilities for the participation of the public as beneficiaries under a trust in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever;

“unit holder” means any investor, beneficiary or person who acquired units in a unit trust scheme and who is entitled to a share of the investments subject to the trusts of a unit trust scheme;

“trustee” under a unit trust means the person in whom the property for the time being subject to any trust created in pursuance of the scheme is or may be invested in accordance with the terms of the trust.

18. Profits of a company from certain dividends

The profits of a company from a dividend received from any other company shall be-

- (a) if that other company is resident in a country to which section 44 of this Act applies, the amount of that dividend increased by the amount of any tax imposed in that country relative to that dividend; and
- (b) if that other company is resident in a country to which section 45 of this Act applies, the amount of that dividend as computed under the provisions of subsection (5) of section 46 of this Act
- (c) Provided that a dividend distributed:
 - (i) by a Nigerian company and satisfied by the issue of shares of the company paying the dividend; or
 - (ii) if the company is a Nigerian company, out of any profits exempted from tax by any provision of this Act, or of the Industrial Development (Income Tax Relief) Act; or
[Cap. 17.]
 - (iii) [deleted by 2021 No. 1, s 6]

shall be excluded from the profits of any other company which is a shareholder in such company.

[1993 No. 3.]

19. Payment of dividend by a Nigerian company

- (1) Where a dividend is paid out as profit on which no tax is payable due to-

[1996 No. 30.]

- (a) no total profits; or
- (b) total profits which are less than the amount of dividend which is paid, whether or not the recipient of the dividend is a Nigerian company,

is paid by a Nigerian company, the company paying the dividend shall be charged to tax at the rate prescribed in subsection (1) of section 40 of this Act as if the dividend is the total profits of the company for the year of assessment to which the accounts, out of which the dividend is declared, relates.

- (2) The provisions of subsection (1) shall not apply to-

[2019 No 1, s. 7]

- (a) dividends paid out of the retained earnings of a company, provided that the dividends are paid out of profits that have been subjected to tax under this Act, the Petroleum Profits Tax Act, or the Capital Gains Tax Act;

- (b) dividends paid out of profits that are exempted from income tax by any provision of this Act, the Industrial Development (Income Tax Relief) Act, the Petroleum Profits Tax Act, or the Capital Gains Tax Act or any other legislation;
 - (c) profits or income of a company that are regarded as franked investment income under this Act; and
 - (d) distributions made by a real estate investment company to its shareholders from rental income and dividend income received on behalf of those shareholders,
- whether such dividends are paid out of profits of the year in which the dividend is declared or out of profits of previous reporting periods

20. Nigerian dividends received by companies other than Nigerian companies

In the case of a company which is neither a Nigerian company nor engaged in a trade or business in Nigeria at any time during a year of assessment-

- (a) no tax shall be charged on it for that year in respect of any dividend received by it from a Nigerian company apart from tax withheld under section 80 of this Act;
- (b) [deleted by 2019 No. 1, s. 8];
- (c) nothing in this Act shall confer on such company or on the company paying the dividend, a right to repayment of tax paid by reason of the provisions of this section.

21. Certain undistributed profits may be treated as distributed

- (1) Where it appears to the Service that a Nigerian company controlled by not more than five persons, with a view to reducing the aggregate of the tax chargeable in Nigeria on the profits or income of the company and those persons, has not distributed to its shareholders as dividend, profits made in any period for which accounts have been made up by such company, which profits could have been distributed without detriment to the company's business as it existed at the end of that period, it may direct that any such undistributed profits of such period be treated as distributed.
- (2) Any amount of profits treated as distributed under the provisions of the foregoing subsection shall, for the purposes of this Act and any enactment in Nigeria imposing tax on the incomes of persons other than companies, be deemed to be profits or income from a dividend accruing to those persons who are shareholders in the company in proportion to their shares in the ordinary capital thereof on such day, and the amount of such profits or income to be taken for assessment in the hands of each such person shall be his proportion thereof increased by such amount in respect of tax deemed to be deducted source, as the Service may determine.
- (3) Any direction by the Service under this section shall be made in writing and be served upon

the company, and shall specify-

- (a) the day to be taken for the purposes of the preceding subsection;
 - (b) the net amount of those profits so deemed to be distributed;
 - (c) the rate of tax deemed to be deducted, being the rate prescribed in subsection (2) of section 80 of this Act;
 - (d) the gross amount which, after deduction of tax at the said rate, leaves such net amount of those profits; and
 - (e) the net Nigerian rate of tax applicable to those profits, being such rate as would have been computed or agreed by the Service under the provisions of subsection (2) of section 43 of this Act if those profits had been distributed by the company as a dividend.
- (4) For the purposes of this section, the Service may give notice to any company which it has reason to believe is controlled by not more than five persons requiring it to supply, within such reasonable time limited in such notice, full particulars of its shareholders on any day.
- (5) Any direction by the Service under this section with respect to the profits of any accounting period of a company, shall be made not later than two years after the receipt by the Service of the duly audited accounts of the company for that period.
- (6) A company in respect of which any direction is made under this section, shall have a right of appeal in like manner as though for the purposes of Part X of this Act, such direction were an assessment.

22. Artificial transactions, etc.

- (1) Where the Service is of opinion that any disposition is not in fact given effect to or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, it may disregard any such disposition or direct that such adjustments shall be made as respects liability to tax as it considers appropriate so as to counteract the reduction of liability to tax affected, or reduction which would otherwise be affected, by the transaction and any company concerned shall be assessable accordingly.
- (2) For the purpose of this section-
- (a) **“disposition”** includes any trust, grant, covenant, agreement or arrangement;
 - (b) transactions between persons one of whom either has control over the other or, in the case of individuals, who are related to each other or between persons both of whom are controlled by some other person, shall be deemed to be artificial or fictitious if in the opinion of the Service those transactions have not been made on terms which might fairly have been expected to have been made by persons engaged in the same or similar

activities dealing with one another at arm's length.

- (3) A company in respect of which any direction is made under this section, shall have a right of appeal in like manner as though for the purposes of Part X of this Act such direction were an assessment.

23. Profits exempted

- (1) There shall be exempt from the tax-

[2021 No. 1, s. 7]

- (a) the profits of any company being a statutory or registered friendly society, in so far as such profits are not derived from a trade or business carried on by such society;
- (b) the profits of any company being a co-operative society registered under any enactment or law relating to co-operative societies, not being profits from any trade or business carried on by that company other than co-operative activities solely carried out with its members or from any share or other interest possessed by that company in a trade or business in Nigeria carried on by some other persons or authority;
- (c) the profits of any company engaged in ecclesiastical, charitable or educational activities of a public character in so far as such profits are not derived from a trade or business carried on by such company;
- (d) the profits of any company formed for the purpose of promoting sporting activities where such profits are wholly expendable for such purpose, subject to such conditions as the Service may prescribe;
- (e) the profits of any company being a trade union registered under the Trade Unions Act in so far as such profits are not derived from a trade or business carried on by such trade union;

[Cap. T14.]

- (f) dividend distributed by Unit Trust;

[1996 No. 32.]

- (g) the profits of any company being a body corporate established by or under any Local Government Law or Edict in force in any State in Nigeria;
- (h) the profits of anybody corporate being a purchasing authority established by an enactment and empowered to acquire any commodity for export from Nigeria from the purchase and sale (whether for the purposes of export or otherwise) of that commodity;
- (i) the profits of any company or any corporation established by the law of a State for the purpose of fostering the economic development of that State, not being profits derived from any trade or business carried on by that corporation or from any share or other interest possessed by that corporation in a trade or business in Nigeria carried on by some

other person or authority;

(j) any profits of a company other than a Nigerian company which, but for this paragraph, would be chargeable to tax by reason solely of their being brought into or received in Nigeria;

(k) dividend, interest, rent, or royalty derived by a company from a country outside Nigeria and brought into Nigeria through Government approved channels. For the purpose of this subsection, “**Government approved channels**”, means the Central Bank of Nigeria, any bank or other corporate body appointed by the Minister as authorised dealer under the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act or any enactment replacing that Act;

[Cap. F34]

(l) the interest on deposit accounts of a foreign non-resident company:

Provided that the deposits into the account are transfers wholly of foreign currencies to Nigeria on or after 1 January 1990 through Government approved channels;

(m) the interest on foreign currency domiciliary account in Nigeria accruing on or after 1 January 1990;

(n) The profits of a small company in a relevant year of assessment:

(o) dividends received from small companies and manufacturing sector in the first five years of their operations

(p) dividend received from investments in wholly export-oriented businesses;

(q) the profits of any Nigerian company (other than companies engaged in the Upstream, Midstream and Downstream petroleum operations) in respect of goods exported from Nigeria, if the proceeds of such exports are used for the purchase of raw materials, plant equipment and spare parts:

provided that tax shall accrue proportionately on the portion of such proceeds which are not utilised in the manner prescribed

(r) the profits of a company whose supplies are exclusively inputs to the manufacturing of products for export, provided that the exporter shall give a certificate of purchase of the inputs of the exportable goods to the seller of the supplies;

(s) the dividend and rental income received by a real estate investment company on behalf of its shareholders provided that-

(i) a minimum 75% of dividend and rental income is distributed, and

(ii) such distribution is made within 12 months of the end of the financial year in which the dividend or rental income was earned;

- (t) the compensating payments, which qualify as dividends under section 9(1)(c) of this Act, received by a lender from its approved agent or a borrower in a Regulated Securities Lending Transaction, such payments are deemed to be franked investment income and shall not be subjected to further tax in the hands of the Lender;
- (u) the compensating payments, which qualify as dividends or interest under section 9(1)(c) of this Act, received by an approved agent from a borrower or lender on behalf of a lender or borrower in a Regulated Lending Transaction; or
- (v) the profit of a company established within an export processing zone or free trade zone:

Provided that 100% production of such company is for export otherwise tax shall accrue proportionately on the profits of the company.

[2021 No. 1, s. 7.]

- (1A) Nothing in this section shall be construed to exempt from deduction at source, the tax which a company making payments is to deduct under sections 78, 79 or 80 of this Act, such that the provisions of sections 78, 79 and 80 of this Act shall apply to a dividend, interest, rent or royalty paid by a company exempted from tax under subsection (1) (a) to (e), (h) to (l), (n), (p) to (s) and (v).”

[2021 No.1 s. 7]

- (1B) Nothing in this section shall be construed to exempt-

[2019 No.1 s. 9]

- (a) shareholders from tax on the dividend or rental income received from a real estate investment company,
- (b) a real estate investment company from tax on management fee, profits or any other income earned for and on its own account, and
- (c) a real estate investment company from tax on dividend and rental income if it does not meet the conditions stipulated in subsection (1) (s);

[2020 No. 1, s. 10]

(1C) [Deleted by 2020 No.1 s. 10]

Power to exempt

- (2) The President may exempt by order-

- (a) any company or class of companies from all or any of the provisions of this Act; or
- (b) from tax all or any profits of any company or class of companies from any source, on any ground which appears to it sufficient.

- (3) The President may by order amend, add to or repeal any exemption made by notice or order

under the provisions of subsection (2) or (4) of section 9 of the Personal Income Tax Act in so far as it affects a company, and, subject to the foregoing, the following notices and order shall continue in force for all purposes of this Act
[Cap. P8.]

- (a) the Income Tax Exemption (Interest on Nigerian Public Loans) Notice;
[L.N. 220 of 1943.]
- (b) the Income Tax (Exemption) (Nigerian Broadcasting Corporation) Order;
[L.N. 85 of 1957.]
- (c) the Railway Loan (International Bank) (Exemption of Interest) Notice.
[L.N. 111 of 1958.]

PART III

Ascertainment of profits

24. Deductions allowed

Save where the provisions of subsection (2) or (3) of section 14 or 16 of this Act apply, for the purpose of ascertaining the profits or loss of any company of any period from any source chargeable with tax under this Act, there shall be deducted all expenses for that period by that company wholly, exclusively, necessarily and reasonably incurred in the production of those profits chargeable to tax including, but without otherwise expanding or limiting the generality of the foregoing-

[2019 No.1 s. 10]

- (a) subject to the provisions of the Seventh Schedule to this Act, any sum payable by way of interest on debt borrowed and employed as capital in acquiring the profits of a company;
[2019 No.1 s. 10]
- (b) rent for that period, and premiums, the liability for which was incurred during that period, in respect of land or building occupied for the purposes of acquiring the profits, subject, in the case of residential accommodation occupied by employees of the company, to a maximum of 100% of the basic salary of employees;
[1996 No. 30. 1996 No. 32.]
- (c) *(deleted by 2007 No. 56, s. 6 (a))*;
- (d) any outlay or expenses incurred during the year in respect of-
 - (i) salary, wages or other remuneration paid to the senior staff and executives;
 - (ii) cost to the company of any benefit or allowance provided for the senior staff and executives, which shall not exceed the limit of the amount prescribed by the collective agreement between the company and the employees and approved by the Federal Ministry responsible for labour matters, as the case may be;

[1991 No. 21, 2007 No. 56, s. 6 (b).]

- (e) any expenses incurred for repair of premises, plant, machinery or fixtures employed in acquiring the profits, or for the renewals, repair or alteration of any implement, utensil or articles so employed;
- (f) bad debts incurred in the course of a trade or business proved to have become bad during the period for which the profits are being ascertained, and doubtful debts to the extent that they are respectively estimated to the satisfaction of the Service to have become bad during the said period notwithstanding that such bad or doubtful debts were due and payable before the commencement of the said period:

Provided that:

- (i) where in any period a deduction under this paragraph is to be made as respects any particular debt, and a deduction has in any previous period been allowed either under the Companies Income Tax Act 1961 or this Act in respect of the same debt, the appropriate reduction shall be made in the deduction to be made for the period in question;

[1961 No. 22.]

- (ii) all sums recovered during the said period on account of amounts previously written off or allowed either under the Companies Income Tax Act 1961 or this Act in respect of bad or doubtful debts shall for the purposes of this Act be deemed to be profits of the trade or business of that period;
- (iii) it is proved to the satisfaction of the Service that the debts in respect of which a deduction is claimed either were included as a receipt of the trade or business in the profits of the year within which they were incurred, or were advances not falling within the provisions of the trade or business in the profits of the year within which they were incurred, or were advances not falling within the provisions of paragraph (e) of section 23 (1) of this Act made in the course of normal trading or business operations;
- (g) any contribution to a pension, provident or other retirement benefits fund, society or scheme approved by the Joint Tax Board under the powers conferred upon it by paragraph (g) of section 85 of the Personal Income Tax Act, subject to the provisions of the Fourth Schedule to the Act and to any conditions imposed by that Board; and any contribution other than a penalty made under the provisions of any enactment establishing a national provident fund or other retirement benefits scheme for employees throughout Nigeria;
[Cap. P8.]
- (h) in the case of the Nigerian Railway Corporation such deductions as are allowed under the provisions of the Authorised Deductions (Nigerian Railway Corporation) Rules, which Rules shall continue in force for all purposes of this Act;
[L.N. 195 of 1959.]
- (i) in the case of profits from a trade or business, any expenses or part thereof-

- (i) the liability for which was incurred during that period wholly, exclusively, necessarily and reasonably for the purposes of such trade or business and which is not specifically referable to any other period or periods; or
- (ii) the liability for which was incurred during any previous period wholly, exclusively, necessarily and reasonably for the purpose of such trade or business and which is specifically referable to the period of which the profits are being ascertained; and
- (iii) the expenses proved to the satisfaction of the Service to have been incurred by the company on research and development for the period including the amount of levy paid by it to the National Science and Technology Fund which is not deductible under any other provision of this section;

[1993 No. 3.]

- (j) such other deduction as may be prescribed by the Minister by any rule.
- (k) dividends or mandatory distributions made by a real estate investment company duly approved by the Securities and Exchange Commission, to its shareholders; and

[2019 No.1 s. 10]

- (l) compensating payments, which qualify as interest under section 9(1)(c) of this Act, made by a lender to its approved agent or a borrower in a Regulated Securities Lending Transaction.

[2019 No.1 s. 10]

25. Deductible donations

- (1) Subject to the provisions of this section and notwithstanding anything contained in section 24 of this Act, for the purpose of ascertaining the profits or loss of any company for any period from any source chargeable with tax under this Act, there shall be deducted the amount of any donation made for that period by that company to any fund, body or institution in Nigeria to which this section applies.
- (2) Without prejudice to section 27 of this Act, it is hereby declared for the avoidance of doubt that the provisions of subsection (1) of this section shall have effect if, but only if, the donations are made out of the profits of the company, and are not expenditure of a capital nature.
- (3) Except to such extent (if any) as the President may by order in the Federal Gazette otherwise direct, any deduction to be allowed to any company, under subsection (1) of this section, for any year of assessment, shall not exceed an amount which is equal to ten percent of the total profits of that company for that year as ascertained before any deduction is made under this section.
- (4) There shall be excluded from the sum allowable as a deduction under this section, any outgoings and expenses which are allowable as deductions under section 24 of this Act.
- (5) This section shall apply to-

- (a) the public funds;
- (b) the statutory bodies and institutions;
- (c) the ecclesiastical, charitable, benevolent, educational and scientific institutions, established in Nigeria, which are specified in the Fifth Schedule to this Act.
[Fifth Schedule.]

- (6) The Minister may by order in the Federal Gazette amend the said Schedule in any manner whatsoever:

Provided that no fund, body or institution shall be added to that Schedule, in exercise of the powers conferred under the foregoing provisions of this subsection, unless the fund is a public fund established in Nigeria, or the body or institution is a statutory body or institution, or is a body or institution of a public character, established in Nigeria.

- (7) In this section references to donations made by a company do not include references to any payments made by the company for valuable consideration.
- (8) Donations made by companies in cash or kind to any fund set up by the Federal Government or any State Government, or to any agency designated by the Federal Government or to any similar Fund or purpose in consultation with any Ministry, Department or Agency of the Federal Government, in respect of any pandemic, natural disaster or other exigency shall be allowed as deductions as follows-
 - (a) the cost of in-kind donations made to the Government and any designated agency shall be allowed as deductions; or
 - (b) where companies have either procured or manufactured items for contribution, the cost of purchase, manufacture or supply of such in-kind contributions shall be allowed as deductions-

Provided that requisite documentation evidencing the donation and the cost thereof are provided to the relevant tax authority and demonstrated to be wholly, reasonably, exclusively, and necessarily incurred in relation to the procurement, manufacture or supply of the in-kind contributions.

[2020 No. 1, s. 11]

- (9) Notwithstanding the provisions of subsections (2) and (3), amounts allowable for deduction, in respect of subsection (8), in any year of assessment shall be limited to 10% of assessable profits after deduction of other allowable donations made by the company.

[2020 No. 1, s. 11]

25A.

- (1) Notwithstanding the provisions of section 24 of this Act, for the purpose of ascertaining the profit or loss of any company for the period from any source chargeable with tax under this Act, there shall be deducted the amount of donation to a university and other tertiary or

research institutions for research or any developmental purpose or as an endowment out of the profits of the period by the company.

- (2) Without prejudice to section 21 (2) and (3) of this Act, any donation made by a company pursuant to subsection (I) of this section shall be allowed as deductible by the company out of the profits of that period notwithstanding that the donation is of a revenue or capital nature.
- (3) Except as the Minister with the approval of the Federal Executive Council may, by order in the Federal Gazette otherwise direct, any deduction to be allowed to any company under subsection (1) of this section shall not exceed an amount which is equal to 15 percent of the total profits or 25 percent of the tax payable in the year of the donation whichever is higher.

[2007 No. 56, s. 7.]

26. Deduction for research and development

- (1) Notwithstanding anything contained in section 24 of this Act, for the purpose of ascertaining the profit or loss of any company for any period from any source chargeable with tax under this Act, there shall be deducted the amount of reserve made out of the profits of that period by that company for research and development.
- (2) The deduction to be allowed to any company under subsection (I) of this section for any year of assessment shall not exceed an amount which is equal to ten percent of the total profits of that company for that year as ascertained before any deduction is made under this section and section 25 of this Act.
- (3) Companies and other organisations engaged in research and development activities for commercialization shall be allowed 20% investment tax credit on their qualifying expenditure for that purpose.

[1996 No. 32.]

27. Deductions not allowed

Notwithstanding any other provision of this Act, no deduction shall be allowed for the purpose of ascertaining the profits of any company in respect of-

- (a) capital repaid or withdrawn and any expenditure of a capital nature;
- (b) any sum recoverable under an insurance or contract of indemnity;
- (c) taxes on income or profits levied in Nigeria or elsewhere, other than tax levied outside Nigeria on profits which are also chargeable to tax in Nigeria where relief for the double taxation of those profits may not be given under any other provision of this Act;
- (d) any payment to a savings, widows and orphans, pension, provident or other retirement benefit fund, society or scheme except as permitted by paragraph (g) of section 24 of this Act;
- (e) the depreciation of any asset;

- (f) any sum reserved out of profits, except as permitted by paragraph (f) of section 24 or 25 of this Act or as may be estimated to the satisfaction of the Service, pending the determination of the amount, to represent the amount of any expense deductible under the provisions of that section, the liability for which was irrevocably incurred during the period for which the income is being ascertained;
- (g) any expense whatsoever incurred within or outside Nigeria involving related parties as defined under the Transfer Pricing Regulations, except to the extent that it is consistent with the Transfer Pricing Regulations;
[2019 No.1 s. 11]
- (h) any expense incurred in deriving tax exempt income, losses of a capital nature and any expense allowable as a deduction under the Capital Gains Tax Act for the purpose of determining chargeable gains.
[2019 No.1 s. 11]
- (i) any compensating payment made by a borrower, which qualifies as dividends under section 9(1)(c) of this Act, to its approved agent or to a Lender in a Regulated Securities Exchange Transaction.
[2019 No.1 s. 11]
- (j) any compensating payment made by an approved agent, which qualifies as interest or dividends under section 9(1)(c) of this Act, to a borrower or lender in a Regulated Securities Exchange Transaction;
[2019 No.1 s. 11]
- (k) penalty or fine imposed pursuant to a legislation enacted by the National Assembly or State House of Assembly; and
[2020 No.1 s. 12]
- (l) any tax or penalty borne by a company on behalf of another person.
[2019 No.1 s. 11]

28. Waivers or refund of liability or expenses

When a deduction has been allowed to a company under the provisions of section 24 or 25 of this Act in respect of any liability of, or any expense incurred by that company and such liability is waived or released or such expense is refunded to the company, in whole or in part, then the amount of that liability or expense which is waived, released or refunded, as the case may be, shall be deemed to be profits of the company on the day on which such waiver, release or refund was made or given.

PART IV

Ascertainment of assessable profits

29. Basis for computing assessable profits

- (1) Save as provided in this section, the profits of any company for each year of assessment from such source of its profits (hereinafter referred to as “the assessable profits”) shall be the profits of the accounting period immediately preceding the year of assessment from each such source:
[2019 No.1 s. 12]

Provided that in respect of any company which makes up its accounts to any date between 1 January and 31 March, 1980, the profits to be assessed to tax-

- (a) in 1980 year of assessment, shall be the profits of the period from the beginning of the accounting year to 31 December, 1979; and
- (b) in 1981 year of assessment, shall be the profits for 1 January to the end of the company's accounting year in 1980.
- (2) When the Service is satisfied that a company has made or intends to make up accounts of its trade or business to someday other than the 31st day of December, it may direct that the assembled profits of that company shall be computed on the amount of the profits of the year ending on that day in the year preceding the year of assessment:

Provided that where the assessable profits of a company have been computed by reference to accounts made up to a certain day, and such company fails to make up an account to the corresponding day in the year following the assessable profits of that company for the year of assessment in which such failure occurs and for two years of assessment next following shall be computed on such basis as the Service in its discretion may decide.

New trade or business

- (3) The assessable profits of any company from any trade or business (or in the case of a company other than a Nigerian company) for its first year of assessment and the two following years of assessment (which years are in this subsection respectively referred to as “the first year”, “the second year” and “the third year”) shall be ascertained in accordance with the following provisions:
- (a) for the first year, the assessable profits shall be the profits from the date in which it commenced to carry on such trade or business in Nigeria to the end of its first accounting period ;
- (b) for the second year, the assessable profits shall be the profits from the first day after its first accounting period to the end of its second accounting period; and
- (c) for the third year and for each subsequent year, the assessable profits shall be the profits from the day after the accounting period just ended.

[2019 No.1 s. 12]

Cessation of trade or business

- (4) Where a company permanently ceases to carry on a trade or business (or in the case of a company other than a Nigerian company, permanently ceases to carry on a trade or business in Nigeria) in an accounting period, its assessable profits therefrom shall be the amount of

profits from the beginning of the accounting period to the date of cessation and the tax thereof shall be payable within six months from the date of cessation.

[2019 No.1 s. 12]

- (5) Where the provisions of subsection (1) of this section apply, such additional assessment or, on a claim being made by the company for this purpose in writing, such reductions of assessments or repayments of tax shall be made as may be necessary to give effect to these provisions:

Provided that, if the company fails to agree with the Service as to the amount of any reduction of an assessment or repayment of tax, the Service shall give notice to the company of refusal to admit the claim to such reduction or repayment and the provisions of Part XI of this Act shall apply accordingly with any necessary modifications as though such notice were an assessment.

Apportionment of profits

- (6) Where in the case of any trade or business it is necessary, in order to arrive at the profits of any year of assessment or other period, to allocate or apportion to specific periods the profits or loss of any period for which accounts have been made up, or to aggregate any such profits or loss or apportioned parts thereof, it shall be lawful to make such allocation, apportionment or aggregation, and any apportionment under this section shall be made in proportion to the number of days in the respective periods, unless the Service, having regard to any special circumstances, otherwise directs.

Receipts and payments after cessation of a trade or business

- (7) Where, after the date on which a company has permanently ceased to carry on a trade or business (as determined for the purposes of subsection (4) of this section), the company, its receivers or liquidators, receive or pay any sum which would have been included in or deducted from the profits of that trade or business if it had been received or paid prior to that date, such sum shall be deemed for all purposes of this Act to have been received or paid by the company on the last day before such cessation occurred.

Certain partnership

- (8) Where a company is engaged in a trade or business in partnership with any other person in Nigeria, that trade or business shall be deemed to constitute a separate source of profits, and the assessable profits of the company from that source shall be determined under the provisions of the Personal Income Tax Act in like manner as would be the assessable income of any individual partner in that partnership:

[Cap. P8.]

Provided that, with respect to any assets of such partnership, where any annual, initial or balancing allowance or charge would fall to be given to or made upon the company for any year under the provisions of the Fifth Schedule to that Act, if the company were an individual partner in that partnership, such allowance or charge shall be given or made as though due under the provisions of the Second Schedule and in place of any other allowance or charge arising thereunder with respect to the same asset.

Trades or businesses sold or transferred

- (9) Where a trade or business carried on by a company is sold or transferred to a Nigerian company for the purposes of better organisation of that trade or business or the transfer of its management to Nigeria and any asset employed in such trade or business is sold or transferred, if the Service is satisfied that one company has control over the other or that both are controlled by some other person or are members of a recognised group of companies and have been so for a consecutive period of at least 365 days prior to the date of reorganisation, the Service may in its discretion direct that-

[2019 No.1 s. 12]

- (a) the provisions of subsections (3) and (4) of this section shall not apply to such trade or business; and
- (b) for the purposes of the Second Schedule to this Act, each such asset shall be deemed to have been sold for, an amount equal to the residue of the qualifying expenditure thereon on the day following such sale or transfer; and

[Second Schedule.]

- (c) the company acquiring each such asset shall not be entitled to any initial allowance with respect to that asset under the said Schedule and any allowances deemed to have been received by the vendor company under the provisions of this paragraph:
Provided that the Service in its discretion-

- (i) may require either company directly affected by any such direction which is under consideration by the Service to guarantee or give security, to the satisfaction of the Service, for payment in full of all tax due or to become due by the company selling or transferring such trade or business; and
- (ii) may impose such conditions as it sees fit on either or both the companies directly affected,

and in the event of failure by either company to carry out or fulfill such guarantee or conditions, the Service may revoke the direction and make all such additional assessments or repayments of tax as may be necessary so as to give effect to such revocation; and for the purposes of this subsection, reference to a trade or business shall include references to any part thereof:

Provided also that if the acquiring company were to make a subsequent disposal of the assets thereby acquired within the succeeding 365 days after the date of transaction, any concession enjoyed under this subsection shall be rescinded and the companies shall be treated as if they did not qualify for the concessions stipulated in this subsection as at the date of initial reorganisation.

[2019 No.1 s. 12]

Trade or business transferred under Part 11 of the Companies and Allied Matters Act

- (10) Where, in pursuance of Chapter 3 of Part 11 of the Companies and Allied Matters Act, a company (in this subsection referred to as “the re-constituted Company”) is incorporated under that Act to carry on any trade or business previously carried on in Nigeria by a foreign company and the assets employed in Nigeria by the foreign company in that trade or business vest in the re-constituted company, then, if the Service is satisfied that the trade or business carried on by the re-constituted company immediately after the incorporation of that company under the Act is not substantially different in nature from the trade or business previously carried on in Nigeria by the foreign company, the following provisions of this subsection shall have effect, that is-

[Cap. C20.]

- (a) the provisions of subsections (3) and (4) of this section shall not apply to the trade or business carried on by the re-constituted company;
- (b) for the purposes of the Second Schedule to this Act, the assets so vested in the re-constituted company shall be deemed to have been sold to it, on the day of the incorporation of that company, for an amount equal to the residue of the qualifying expenditure thereon on the day following the day on which the trade or business previously carried on in Nigeria by the foreign company ceased; and

[Second Schedule.]

- (c) the re-constituted company shall not be entitled to any initial allowances as respects those assets and shall be deemed to have received all allowances given to the foreign company in respect of those assets under the Second Schedule to this Act and any allowances deemed to have been received by the foreign company under the provisions of this paragraph or subsection (9) of this section; and

[Second Schedule.]

- (d) subject to subsection (11) of this section, the amount of any loss incurred during any year of assessment by the foreign company in the said trade or business previously carried on by it in Nigeria, being a loss which has not been allowed against any assessable profits or income of that company for any such year, under the provisions of this Act or the corresponding provisions of the Companies Income Tax Act 1961 or the Income Tax Act, shall be deemed to be a loss incurred by the re-constituted company in its trade or business during the year of assessment in which its trade or business commenced; and the amount of that loss shall, in accordance with section 31 of this Act, be deducted from the assessable profits of the re-constituted company;

[1961 No. 22. Cap. 85 1958 Edition.]

- (e) no deduction shall be made under paragraph (d) of this subsection in respect of any loss to which that paragraph relates-

- (i) except to the extent, (if any) to which it is proved by the re-constituted company to the satisfaction of the most senior officer in the Industrial Inspectorate Division of the Federal Ministry of Industry (hereinafter in this subsection referred to as “the director”) that the loss was not the result of any damage or destruction caused by any

military or other operations connected with the civil war in which Nigeria was engaged and which ended on 15 January, 1970:

Provided that the President may by order direct that, to the extent specified in the order, a deduction under paragraph (d) of this subsection shall be made in respect of a loss which was the result of any damage or destruction caused by any military or other operations connected with the said civil war;

- (ii) unless within three years after the incorporation of the re-constituted company a claim for the deduction is lodged by that company with the director and a copy of the claim is forwarded by that company to the Service; and
- (f) any deduction to which paragraph (d) of this subsection applies, shall be made as far as possible from the amount, if any, of the assessable profits of the reconstituted company for the year of assessment in which its trade or business commenced and, so far as it cannot be so made, then from the amount of the assessable profits of the next year of assessment, and so on, but such deductions shall not be made against the profits of the company after the fourth year from the commencement of such business,

and in this subsection “**foreign company**” means a company incorporated outside Nigeria before 18 November, 1968, and having on that date an established place of business in Nigeria.

Service may call for returns and information relating to certain assets, etc.

- (11) For the purposes of subsections (9) and (10) of this section, the Service may by notice require any person (including a company to which any assets have vested in pursuance of Chapter 3 of Part II of the Companies and Allied Matters Act) to prepare and deliver to the Service any returns specified in the notice or any such information as the Service may require about the assets; and it shall be the duty of that person to comply with the requirements of any such notice within the period specified in the notice, not being a period of less than 21 days from the service thereof.

[Cap. C20.]

- (12) No merger, take-over, transfer or restructuring of the trade or business carried on by a company shall take place without having obtained the Service's direction under subsection (9) of this section and clearance with respect to any tax that may be due and payable under the Capital Gains Tax Act.

[Cap. Cl.]

30. Service's power to assess and charge on turn-over of trade or business

- (1) Notwithstanding section 40 of this Act, where in respect of any trade or business carried on in Nigeria by any company (whether or not part of the operations of the business are carried on outside Nigeria) it appears to the Service that for any year of assessment, the trade or business produces either no assessable profits or assessable profits which in the opinion of the Service are less than might be expected to arise from that trade or business or, as the case may be, the true amount of the assessable profits of the company cannot be ascertained, the Service may, in respect of that trade or business, and notwithstanding any other

provisions of this Act if the company is a

(a) Nigerian company, assess and charge that company for that year of assessment on such fair and reasonable percentage of the turn-over of the trade or business as the Service may determine;

(b) if that company is a company other than a Nigerian company and-

(i) that company has a fixed base of business in Nigeria, assess and charge that company for that year of assessment on such fair and reasonable percentage of that part of the turnover attributable to the fixed base;

(ii) that company operates a trade or business through a person in Nigeria authorised to conduct on its behalf or on behalf of some other companies controlled by it or which have a controlling interest in it; or habitually maintains a stock of goods or merchandise in Nigeria from which deliveries are regularly made by a person on behalf of the company, assess and charge to the extent that the profit is attributable to the business or trade carried on through that person,

(ii a) That company transmits, emits or receives signals, sounds, messages, images or data of any kind by cable, radio, electromagnetic systems or any other electronic or wireless apparatus to Nigeria in respect of any commerce, trade or activity, including electronic commerce, application store, high frequency trading, electronic data storage, online adverts, participative network platform, online payments and so on, to the extent that the company has significant economic presence in Nigeria, assess and charge that company for that year of assessment on such fair and reasonable percentage of that part of the turnover attributable to that presence;”

[2021 No. 1 s.8]

(iii) that company executes one single contract involving surveys, deliveries, installations or construction, assess and charge the company for that year of assessment on such a fair and reasonable percentage of the turnover of the contract; and

(iv) the trade or business is between the company and another person controlled by it or which has a controlling interest in it and conditions are made or imposed between the company and such person in their commercial or financial relations which in the opinion of the Service is deemed to be artificial or fictitious, assess and charge on a fair and reasonable percentage of that part of the turnover as may be determined by the Service.

[1993 No. 3.]

(2) The provisions of this Act as to notice of assessment, additional assessment, appeal and other proceedings, shall apply to an assessment or additional assessment made under this section as they apply to an assessment or additional assessment made under any other section of this Act.

PART V

Ascertainment of total profits

31. Total profits from all sources

- (1) (1) The total profits of any company for any year of assessment, shall be the amount of its total assessable profits from all sources for that year together with any additions thereto to be made in accordance with the provisions of the Second Schedule to this Act, less any deductions to be made or allowed in accordance with the provisions of this section, section 32 and of the said Schedule.

[Second Schedule.]

- (1A) The deduction to be allowed in accordance with the provisions of the Second Schedule, referred to in subsection (1) of this Section, shall be the amount relating to the qualifying capital expenditure incurred in generating the assessable profits.

[2021 No. 1 s.9]

- (1B) Where the qualifying capital expenditure is in relation to an asset that is only partially utilized in generating the taxable income such qualifying capital expenditure shall be pro-rated and only the portion relating to the taxable income shall be allowable as a deduction.

Provided that the provisions of this subsection shall apply only where the proportion of non-taxable income constitutes greater than 20% of the total income of the company.

[2021 No. 1 s.9]

- (1C) For the purposes of this Section and the Second Schedule to this Act, the capital allowance for any assessment year in which a company is considered as a small company or a medium company shall be computed in accordance to the provisions of the Second Schedule, and the amount so computed together with any unabsorbed allowances brought forward from previous years shall be deemed to have been made and consumed by such company in each such year of assessment and the residue carried forward into subsequent years.

[2021 No. 1 s.9]

- (1D) The provisions of subsection (1 A) – (1 C) of this section shall not apply to a company that enjoys pioneer status under the Industrial Development (Income Tax Relief) Act”

[2021 No. 1 s.9]

- (a) the amount of a loss which the Service is, satisfied has been incurred by the company in any trade or business during any preceding year of assessment:

Provided that-

- (i) in no circumstances shall the aggregate deduction from assessable profits or income in respect of any such loss exceed the amount of such loss; and
- (ii) a deduction under this section for any particular year of assessment shall not exceed the amount, if any, of the assessable profits, included in the total profits for that year

of assessment, from the trade or business in which the loss was incurred and shall be made as far as possible from the amount of such assessable profits of the first year of assessment after that in which the loss was incurred and, so far as it cannot be so made, then from such amount of such assessable profits of the next year of assessment, and so on;

[2019 No.1 s. 13]

(iii) [deleted by 2007 No. 56, s. 8];

- (b) the amount of any loss which, under paragraph (d) of subsection (10) of section 29 is deemed to be a loss incurred by the company during the year of assessment in which its trade or business commenced, so however that any deduction in respect of that loss shall be made as provided under paragraph (f) of that subsection.
- (2) The amount of any loss incurred by a company engaged in an agricultural trade or business for the year of assessment in which it commenced to carry on such trade or business, shall be deducted as far as possible from the assessable profits of the first year of assessment after that in which the loss was incurred and so far as it cannot be so made, then from such amount of such assessable profits of the next year of assessment, and so on (without limit as to time) until the loss has been completely set off against the company's subsequent assessable profits.
- (3) For the purposes of subsection (2) of this section, the loss incurred during any year of assessment shall be computed, where the Service so decides, by reference to the year ending on a day in such year of assessment which would have been adopted under subsection (2) of section 29 of this Act for the computation of assessable profits for the following year of assessment if such profits had arisen.
- (4) For the purposes of subsection (2) of this section, the loss incurred during any year of assessment shall be computed, where the Service so decides, by reference to the year ending on a day in such year of assessment which would have been adopted under subsection (2) of section 29 of this Act for the computation of assessable profits for the following year of assessment if such profits had arisen.
- (5) Where under the provisions of subsection (6) of section 29 of this Act for the purpose of computing the profits of a period from a source chargeable with tax under this Act, being a period the profits of which are assessable profits from that source for any year, it has been necessary to allocate or apportion to specific periods which fall within that whole period both profits and losses, then no deduction shall be made under the provisions of subsection (2) of this section in respect of the loss or apportioned part thereof referable to any such specific period, except to the extent that such loss or part thereof exceeds the aggregate profits apportioned to the remaining specific period or periods within that whole period.

32. [Deleted by 2023 No. 1, s. 6]

33. Payment of minimum tax

- (1) Notwithstanding any other provisions in this Act where in any year of assessment the

ascertainment of total assessable profits from all sources of a company results in a loss, or where a company's ascertained total profits results in no tax payable or tax payable which is less than the minimum tax, there shall be levied and paid by the company the minimum tax as prescribed by subsection (2) of this section.

[1991 No. 21.]

- (2) For the purpose of subsection (1), the minimum tax to be levied and paid shall be 0.5% of gross turnover of the company less franked investment income-

[2021 No. 1 s.10]

Provided, that-

- (a) the applicable minimum tax is reduced to 0.25% for tax returns prepared and filed with respect to financial years ending on any between 1 January 2020 and 31 December 2021, both days inclusive.
- (b) Where the company had filed its relevant tax returns for any year of assessment falling on any date between 1 January 2020 and 31 December 2021 both days inclusive, the applicable minimum tax is reduced to 0.25% for tax returns prepared and filed for any two accounting periods ending on any date between 1 January 2019 and 31 December 2021, both days inclusive; and
- (c) For the purpose of this section, the application of the reduced rate shall be available for only two accounting periods either from 1 January 2019 to 31 December 2020 or from 1 January 2020 to 31 December 2021, as may be determined by the taxpayer.”

[2020 No.1 s. 10]

- (3) The provisions of this section shall not apply to-

- (a) a company carrying on agricultural trade or business as defined in subsection (9) of section 11 of this Act.
- (b) a company that earns gross turnover of less than ₦25,000,000 in the relevant year of assessment

[2019 No.1 s. 14]

- (c) any company for the first four calendar years of its commencement of business.

[1991 No. 21.]

- (4)

- (a) Nothing in this section shall exempt any company from payment of any levy or tax imposed on the total profits of the company under section 40 of this Act so however that the tax payable under subsection (1) of this section, shall be the amount by which the amount computed under subsection (2) thereof exceeds the amount that is levied and payable under section 40 of this Act.
- (b) For the purposes of this section and the Second Schedule to this Act, the capital allowance for any assessment year in which a minimum tax is payable, shall be computed and the

amount so computed, together with any unabsorbed allowances brought forward from previous years, shall be deducted as far as possible from the assessable profits of the assessment year and, so far as it cannot be completely deducted, the amount by which the total amount of the capital allowance exceeds the amount of the assessable profit of the assessment year, shall be carried forward to the next assessment year.

[Second Schedule. 1993 No. 3.]

34. [Deleted by 2023 No. 1, s.7]

35. Export processing zone allowance

(1) A company which has incurred expenditure in its qualifying building and plant equipment an approved manufacturing activity in an export processing zone shall be granted 100 percent capital allowance in any year of assessment.

[1996 No. 31.]

(2) A company granted capital allowance under subsection (1) of this section shall not be entitled to an investment allowance under this Act.

[1996 No. 31.]

(3) The profit or gains of a 100 percent export oriented undertaking established within and outside an export free zone shall be exempt from tax for the first three consecutive assessment years provided that-

(i) the undertaking is 100 percent export oriented;

(ii) the undertaking is not formed by splitting or breaking up or reconstructing a business already in existence;

(iii) it manufactures, produces and exports articles during the relevant year and the export proceeds form 75 percent of its turnover;

(iv) the undertaking is not formed by transfer of machinery or plants previously used for any purpose to the new undertaken or where machinery or plant previously used for any purpose is transferred does not exceed 25 percent of the total value of the machinery or the undertaking;

(v) the undertaking repatriates at least 75 percent of the export earnings to Nigeria and places it in a domiciliary account in any registered and licensed bank in Nigeria.

[1996 No. 32.]

(4) For the purpose of subsection (3) of this section only the tax written down value of the assets shall be carried forward at the end of the tax holidays.

[1996 No. 32.]

(5) In this section “**export processing zone**” and “**approved activity**” have the meanings assigned to them in the Nigerian Export Processing Zone Act.

[1996 No. 31. Cap. N 107.]

36. Mining of solid minerals

A new company going into the mining of solid minerals shall be exempt from tax for the first three years of its operation.

[1996 No. 32.]

37.[Deleted by 2023 No. 1, s.8]

25 percent of incomes in convertible currencies derived from tourists by a hotel shall be exempt from tax,

38. [Deleted by 2007 No. 56, s. 10.]

PART VI

Incentives to the gas industry

39. Gas utilisation (downstream operations)

- (1) Where a company is engaged in a trade or business of gas utilisation in downstream operations, the company shall, in respect of that trade or business, be granted the following incentives-

[2020 No. 1, s. 14]

- (a) an initial tax-free period of three years which may, subject to the satisfactory performance of the business, be renewed for an additional period of two years;

provided that:

- (i) this incentive is claimable not more than once by the same company.
- (ii) any company formed from reorganisation, restructuring, buy-back or other similar schemes out of a company which has already enjoyed this incentive shall not be entitled to it.
- (iii) This incentive shall not only apply to any company that has claimed an incentive for trade or business of gas utilization under any law in Nigeria, including the Petroleum Profits Tax Act or incentives under the Industrial Development (Income Tax Relief Act”;

[2021 No. 1, s. 11]

- (b) as an alternative to the initial tax-free period granted under paragraph (a) of this subsection, an additional investment allowance of 35 percent which shall not reduce the value of the asset, so however that a company which claims the incentive provided under this paragraph shall not also claim the incentive provided under paragraph (c) (ii) of this subsection;

[1999 No. 30.]

(c) accelerated capital allowances after the tax-free period, as follows, that is -

- (i) an annual allowance of 90 percent with 10 percent retention, for investment in plant and machinery;
- (ii) an additional investment allowance of 15 percent which shall not reduce the value of the asset;

[1998 No. 18.]

(d) tax free dividends during the tax free period, where-

- (iii) the investment for the business was in foreign currency; or [1998 No. 18.]
- (iv) the introduction of imported plant and machinery during the period was not less than 30 percent of the equity share capital of the company;

[1999 No. 30.]

(e) [deleted by 2019 No. 1, s. 15]

- (2) The tax-free period of a trade or business shall start on the day the trade or business commences production as certified by the Ministry of Petroleum Resources.

[2020 No. 1, s. 14]

(3) [deleted by 2021 No. 1, s. 15]

(4) In this section-

“gas utilisation” means the marketing and distribution of natural gas for commercial purposes and includes power plant, liquefied natural gas, gas to liquid plant, fertilizer plant, gas transmission and distribution pipelines;

[1998 No. 19.]

“tax-free period” means the tax-free period referred to in subsection (1) (a) of this section.

PART VII

Rate of tax, deduction of tax from dividends and relief for double taxation

40. Rates of tax

There shall be levied and paid for each year of assessment in respect of total profits of every company, tax as follows, in the case of a-

- (a) small company, tax as provided under section 23 (1)(o) of this Act;

(b) medium-sized company, tax at the rate of 20 Kobo for every Naira; and

(c) large company, tax at the rate of 30 Kobo for every Naira.

[2019 No.1 s. 16]

41. [Deleted by 2019 No. 1, s. 17]

42. [Deleted by 2007 No. 56, s. 12.]

43. [Deleted by 2019 No. 1, s. 17]

44. Relief in respect of Commonwealth income tax

(1) If any Nigerian company which has paid, by deduction or otherwise, or is liable to pay, tax under this Act for any year of assessment on any part of its profits, proves to the satisfaction of the Service that it has paid, by deduction or otherwise, or is liable to pay, Commonwealth income tax for that year in respect of the same part of its profits, it shall be entitled to relief from tax paid or payable by it under this Act on that part of its profits at a rate thereon to be determined as follows: if the Commonwealth rate does not exceed one shall' of the rate of tax under this Act, the rate at which relief is to be given shall be the Commonwealth rate tax;

(a) in any other case the rate at which relief is to be given shall be half the rate of tax under this Act.

(2) If any company, other than a Nigerian company which has paid, by deduction or otherwise, or is liable to pay, tax under this Act for any year of assessment on any part of its profits, proves to the satisfaction of the Service that it has paid, by deduction or otherwise, or is liable to pay, Commonwealth income tax for that year of assessment in respect of the same part of its profits, it shall be entitled to relief from tax paid or payable by it under this Act on that part of its profits at a rate thereon to be determined as follows-

(a) if the Commonwealth rate of tax does not exceed the rate of tax under this Act, the rate at which relief is to be given shall be one half of the Commonwealth rate of tax;

(b) if the Commonwealth rate of tax exceeds the rate of tax under this Act, the rate at which relief is to be given shall be equal to the amount by which the rate of tax under this Act exceeds one half of the Commonwealth rate of tax.

(3) For the purposes of this section-

“Commonwealth income tax” means any tax on income or profits of companies charged under a law in force in any country within the Commonwealth or in the Republic of Ireland which provides for relief from tax charged both in that country and Nigeria in a manner corresponding to the relief granted by this section;

“the rate of tax” under this Act of a company for any year of assessment means the rate determined by dividing the amount of tax imposed for that year (before the deduction of any double taxation relief granted by this Part) by the amount of the total profits of the company

liar that year, and the Commonwealth rate of tax shall be determined in a similar manner.

- (4) Any claim for relief from tax for any year of assessment under this section shall be made not later than six years after the end of that year, and if the claim is admitted, the amount of the tax to be relieved shall be re-paid out of the tax paid for that year of assessment or set-off against the tax which the company is liable to pay for that year of assessment:

Provided that if the company fails to satisfy the Service as to the amount of the tax to be relieved, the Service shall give notice of refusal to admit the claim and the provisions of Part XI shall apply accordingly with any necessary modifications as though such notice were an assessment.

45. Double taxation arrangements

- (1) If the Minister by order declares that arrangements specified in the order have been made with the Government of any country outside Nigeria with a view to affording relief from double taxation in relation to tax imposed on profits charged by this Act and any tax of a similar character imposed by the laws of that country, and that it is expedient that those arrangements should have effect, the arrangements shall have effect notwithstanding anything in this Act.
- (2) On the making of an order under this section with respect to arrangements made with the government of any Commonwealth country or the Republic of Ireland, section 44 of this Act shall cease to have effect as respects that country and shall be deemed to have ceased to have had effect as from the beginning of the first year of assessment for which the arrangements are expressed to apply except in so far as the arrangements otherwise provide.
- (3) Where any arrangements have effect by virtue of this section, any obligation as to secrecy in this Act shall not prevent the disclosure to any authorised officer of the government with which the arrangements are made of such information as is required to be disclosed under the arrangements.
- (4) The Minister may make rules for carrying out the provisions of any arrangements having effect under this section.
- (5) An order made under the provisions of subsection (1) of this section may include provisions for relief from tax for periods commencing or terminating before the making of the order and provisions as to profits which are not themselves liable to double taxation.

46. Method of calculating relief to be allowed for double taxation

- (1) The provisions of this section shall have effect where, under arrangements having effect under section 45 of this Act, foreign tax payable in respect of any profits in the country with the government of which the arrangements are made is to be allowed as a credit against tax payable in respect of those profits under this Act, and in this section, “**foreign tax**” means any tax payable in that country which under the arrangements is to be so allowed.
- (2) The amount of the tax chargeable in respect of the profits which are liable to both tax and foreign tax shall be reduced by the amount of the credit admissible under the terms of the arrangement:

Provided that no credit shall be allowed to a company for a year of assessment unless during some part of that year it was a Nigerian company.

- (3) The credit shall not exceed the amount which would be produced by computing, in accordance with the provisions of this Act, the amount of the profits which are liable to both tax and foreign tax, and then charging that amount to tax at a rate ascertained by dividing the tax chargeable (before the deduction of any double taxation relief granted by this Part of this Act) on the total profits of the company entitled to the profits by the amount of the total profits.
- (4) Without prejudice to the provisions of subsection (3) of this section, the total credit to be allowed to a company for a year of assessment for foreign tax under all arrangements having effect under section 45 of this Act shall not exceed the total tax payable by it for that year of assessment.
- (5) In computing the amount of the profits-
 - (a) no deduction shall be allowed in respect of foreign tax (whether in respect of the same or any other profits;
 - (b) where tax chargeable depends on the amount received in Nigeria, the said amount shall be increased by the appropriate amount of the foreign tax in respect of the profits; and
 - (c) where the profits include a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividend, the amount of the profits shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of the credit, but notwithstanding anything in the preceding provisions of this subsection a deduction shall be allowed of any amount by which the foreign tax in respect of the profits exceeds the credit thereof.
- (6) Paragraphs (a) and (b) of subsection (5) of this section, but not the remainder thereof shall, apply to the computation of total profits for the purpose of determining the rate mentioned in subsection (3) of this section, and shall apply thereto in relation to all profits in respect of which credit falls to be given for foreign tax under arrangements for the time being in force under section 45 of this Act.
- (7) Where-
 - (a) the arrangements provide, in relation to dividends of some classes but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividends; and
 - (b) a dividend is paid which is not of a class in relation to which the arrangements so provide, then, if the dividend is paid to a company which controls, directly or indirectly, not less than

one half of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

- (8) Credit shall not be allowed under the arrangements against tax chargeable in respect of the profits of a company for any year of assessment if the company elects that credit shall not be allowed in the case of those profits for that year.
- (9) Any claim for an allowance by way of credit shall be made not later than two years after the end of assessment, and in the event of any dispute as to the amount allowable the claim shall be subject to objection and appeal in like manner as an assessment.
- (10) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable in Nigeria or elsewhere, nothing in this Act limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than two years from the time when all such assessments, adjustments and other determinations have been made, whether in Nigeria or elsewhere, as are material in determining whether any, and if so what, credit falls to be given.

PART VIII

Persons chargeable, agents, liquidators, etc.

47. Chargeability to tax

A company shall be chargeable to tax-

- (a) in its own name; or
- (b) in the name of any principal officer, attorney, factor, agent or representative of the company in Nigeria in like manner and to like amount as such company would be chargeable; or
- (c) in the name of a receiver or liquidator, or of any attorney, agent or representative thereof in Nigeria, in like manner and to like amount as such company would have been chargeable if no receiver or liquidator had been appointed.

48. Manager, etc., to be answerable

The principal officer or manager in Nigeria of every company shall be answerable for doing all such acts, matters and things as are required to be done by virtue of this Act for the assessment of the company and payment of the tax.

49. Power to appoint agent

- (1) The Service may by notice in writing appoint any person to be the agent of any company and the person so declared the agent shall be agent of such company for the purposes of this Act, and may be required to pay any tax which is or will be payable by the company from any

moneys which may be held by him for, or due by or to become due by him to, the company whose agent he has been declared to be, and in default of such payment the tax shall be recoverable from him.

- (2) For the purposes of this section, the Service may require any person to give information as to any moneys, funds or other assets which may be held by him for, or of any moneys due by him to, any company.
- (3) The provisions of this Act with respect to objections and appeals shall apply to any notice given under this section as though such notice were an assessment.

50. Indemnification of manager, etc., or agent

Every person answerable under this Act for the payment of tax on behalf of a company may retain out of any money coming into his hands on behalf of such company so much thereof as shall be sufficient to pay such tax, and shall be and is hereby indemnified against any person whatsoever for all payments made by him in pursuance and by virtue of this Act.

51. Company wound up

Where a company is being wound up, the liquidator of the company shall not distribute any of the assets of the company to the shareholders thereof unless he has made provision for the payment in full of any tax which may be found payable by the company, including any tax deductions made by the company under any laws in force in any part of Nigeria relating to the tax of individuals.

52. Liability to file return

- (1) Whether or not a company is liable to pay tax under this Act for a year of assessment and whether or not a return has been filed under section 55 of this Act, a company shall, upon a notice from the Service, file with the Service in the prescribed form, within such reasonable time as may be stipulated in such notice, a return of income for the year of assessment designated therein together with the audited accounts and information stipulated in subsection (1) (a) and (b) of section 55 of this Act.

[1991 No. 63.]

- (2) Every company whose turnover is one million naira and above shall file self assessment return within six months of its accounting period provided that a company whose turnover is below one million naira shall file a self-assessment return as from 1998 year of assessment.

[1996 No. 32.]

53. Self-assessment of tax payable

- (1) Every company filing a return under section 52, 55 or 58 of this Act shall-
 - (a) in the return, compute the tax payable by the company for the year of assessment; and
 - (b) forward with the tax return, evidence of payment of the tax due.

[2020 No. 1, s. 15]

- (2) Where, by a deliberate and dishonest act, the returns filed fail to declare the true and correct

amount of profits or tax payable by the company, the company is immediately liable to pay any outstanding tax so identified and assessed.

[2020 No. 1, s. 15]

- (3) The outstanding tax shall be subject to penalty and interest, in accordance with the provisions of this Act or any other relevant law, and the penalty and interest shall accrue from the date the incorrect return was filed.

[2020 No. 1, s. 15]

54. Currency of assessment

Notwithstanding anything to the contrary in any law, an income tax assessment under section 52, 53 or 55 of this Act shall be made in the currency in which the transaction giving rise to the assessment was effected.

[1996 No. 30.]

PART IX

Returns

55. Returns and provisional accounts

- (1) Every company, including a company granted exemption from incorporation shall, whether or not a company is liable to pay tax under this Act for a year of assessment, with or without notice from the Service, file a self-assessment return with the Service in the prescribed form at least once a year and such return shall contain-

- (a) the audited accounts, tax and capital allowances computation for the year of assessment and a true and correct statement in writing containing the amount of profit from each and every source computed;
- (b) a duly completed self-assessment form as may be prescribed by the Service, from time to time, attested to by a director or secretary of the company and such attestation shall contain a declaration that it contains a true and correct statement of the amount of its profits computed in respect of all sources in accordance with this Act and any rule made and that the particulars given in such return are true and complete; and
- (c) evidence of payment of the whole or part of the tax due into a bank designated for the collection of the tax.

- (1A) Where any company other than a Nigerian company derives profit from or is taxable in Nigeria under section 13 (2) of this Act, such company shall be required to submit a return for the relevant year of assessment containing-

- (a) the company's full audited financial statements and the financial statement of the Nigerian operations, attested by an independent qualified or certified accountant in

Nigeria;

- (b) tax computation schedules based on the profits attributable to its Nigerian operations;
- (c) a true and correct statement, in writing, containing the amount of profits from each and every source in Nigeria; and.
- (d) duly completed Companies Income Tax Self-Assessment Forms-

Provided that in a year of assessment where a company other than a Nigerian company only earns income on which withholding tax is the final tax under this Act, the obligation to file a tax return in the manner prescribed shall not apply to such company in that year of assessment.

[2020 No. 1, s. 16]

- (2) Subject to this Act or any regulation made, the time of filing returns shall be-
 - (a) in the case of a company that has been in business for more than eighteen months, not more than six months after the end of its accounting year; and
 - (b) in the case of a newly incorporated company, within eighteen months from the date of its incorporation or not later than six months after the end of its first accounting period, whichever is earlier; in addition, the form of returns shall be signed by a director who must be the chairman or the managing director of the company and the secretary respectively.
- (3) Any company which fails to comply with the provisions of subsection (2) shall be liable to pay as penalty for late filing-
 - (a) ₦25,000 in the first month in which the failure occurs; and
 - (b) ₦5,000 for each subsequent month in which the failure continues.
- (4) Notwithstanding anything to the contrary in any law, an income tax assessment shall be made in the currency in which the transaction took place.
- (5) Where an offence under this section by a company is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of any director, manager, secretary or other similar officer, servant or agent of the company (or the person purporting to act in any such capacity) he as well as the company shall be deemed to have committed the offence and shall on conviction be liable to a fine not exceeding ₦100,000 or imprisonment for a term not exceeding two years or to both such fine and imprisonment.
- (6) For the purposes of this section:
 - (a) every company shall designate a representative who shall answer every query relating to

the tax matters of the company; and

- (b) a person designated by a company pursuant to paragraph (a) of this subsection shall be a person knowledgeable in the field of taxation as may be approved, from time to time, by the Service.

[2007 No. 56, s. 13.]

- (7) Notwithstanding anything contained in this section, the Service may by notice specify the form of the accounts to be included in a tax return, instead of audited accounts specified in subsection (1) (a), in respect of small and medium companies as defined under this Act.

[2020 No. 1, s. 16]

- (8) Any company which fails to comply with the provision of subsection (2) of this Section and claims the minimum tax relief under section 33(2) of this Act shall be liable to pay as penalty for late filing, an amount equivalent to the relief sought.

[2021 No. 1, s 12]

56. *[Deleted by 2007 No. 56, s. 14.]*

57. Filing of returns by companies operating in the capital market

- (1) Every company operating in a Nigerian stock exchange as a capital market operator shall, not later than seven days after the end of each calendar month, file with the Service or any other relevant tax authority, a return in the prescribed form of its transactions during the preceding calendar month.

[1999 No. 30, 2007 No. 56, s. 15.]

- (2) A company filing a return shall, where its transactions involve-

- (a) an offer in the primary market, state in the return-

- (i) the type of offer;
- (ii) the services rendered;
- (iii) the amount of tax deducted at source; and

- (iv) the amount of value added tax payable;

- (b) operations in the secondary market, state in the return:

- (i) the number and value of transactions carried out during the relevant calendar month;
- (ii) the commission received or paid;
- (iii) the amount of tax deducted at source; and
- (iv) the amount of value added tax payable.

[1999 No. 30.]

58. Service may call for further returns

The Service may give notice in writing to any company when and as often as it thinks necessary requiring it to deliver within a reasonable time specified by such notice fuller or further returns respecting any matter as to which a return is required or prescribed by this Act.

[2007 No. 56, s. 16.]

59. Extension of period of making returns

(1) A company may apply in writing to the Service for an extension of the time within which to comply with the provisions of sections 52, 55 (3) and 60 of this Act, provided the company-

- (a) makes the application before the expiration of the time stipulated in those sections for making the returns; and
- (b) shows good cause for its inability to comply with those provisions.

[1996 No. 30.]

(2) If the Service is satisfied with the cause shown in an application under subsection (1) of this section, it may in writing grant the extension of time for making the application to such time as it may consider appropriate.

[1996 No. 30.]

60. Call for returns, books, documents and information

(1) For the purpose of obtaining full information in respect of the profits within the time specified by the notice to any person the Service shall give notice to that person requiring him to-

- (a) complete and deliver to the Service any return specified in such notice;
- (b) appear personally before an officer of the Service for examination with respect to any matter relating to such profits;
- (c) produce or cause to be produced for examination books, documents, and any other information at the place and time stated in the notice, which time may be from day to day, for such period as the Service may deem necessary; or
- (d) give orally or in writing any other information including a name and address specified in such notice.

(2) For the purposes of paragraphs (a) to (a) of subsection (1) of this section, the time specified by such notice shall not be less than seven days from the date of service of such notice, except that an officer of the Service not below the rank of a chief inspector of taxes or its equivalent may act in any of the cases stipulated in paragraphs (a) to (a) of subsection (1) of this section, without giving any of the required notices set out in this section.

- (3) A person who contravenes the provisions of this section commits an offence and shall, in respect of each offence, be liable on conviction to a fine equivalent to the amount of the tax liability in addition to paying the tax due.
- (4) Nothing in this section or in any other provision of this Act shall be construed as precluding the Service from verifying by tax audit or investigation into any matter relating to any return or entry in any book, document, accounts, including those stored in a computer, digital, magnetic, optical or electronic media as may, from time to time, be specified in any guideline by the Service.
- (5) Any person may apply in writing to the Service for an extension of time within which to comply with the provisions of this section and section 10 of this Act, in so far as the person-
 - (a) makes the application before the expiration of the time stipulated in this section for making the returns; and
 - (b) shows good cause for his inability to comply with this provision.
- (6) If the Service is satisfied with the cause shown in the application of subsection (5) (b) of this section, it may in writing grant the extension of the time or limit the time as it may consider appropriate.

[1993 No. 3, 2007 No. 56, s. 17.]

61. Information to be delivered by bankers

- (1) Without prejudice to section 60 of this Act, every person engaged in banking including any person charged with the administration of the Federal Savings Bank Act, shall prepare a return at the end of each month specifying the names and addresses of new customers of the bank and shall not later than the seventh day of the next following month deliver the return to a tax authority of the area where the bank operates, or where such customer is a company to the Federal Inland Revenue Service.

[Cap. F20.]

- (2) Subject to the foregoing provisions of this section, for the purpose of obtaining information relative to taxation, the Service may give notice to any person including a person engaged in banking business in Nigeria and any person charged with the administration of the Federal Savings Bank Act to provide within the time stipulated in the notice, information including the name and address of any person specified in the notice:

[Cap. F20.]

Provided that a person engaged in banking business in Nigeria including any person charged with the administration of the Federal Savings Bank Act, shall not be required to disclose any further information under this section unless such disclosure is required by a notice signed by the chairman of the Service.

[Cap. F20.]

62. Return deemed to be furnished by due authority

A return, statement or form purporting to be furnished under this Act by or on behalf of any person

shall for all purposes be deemed to have been furnished by that person or by his authority, as the case may be, unless the contrary is proved, and any person signing any such return, statement or form shall be deemed to be cognisant of all matters therein.

63. Books of account

(1) Every company, including a company granted exemption from of incorporation, shall, whether or not the company is liable to pay tax under this Act, maintain books or records of accounts, containing sufficient information or data of all transactions.

[2020 No. 1, s. 17]

(2) The books and records required to be maintained under subsection (1) shall be in the- English language and shall, for the purposes of tax account, be consistent with the format that may be prescribed by the Service.

[2020 No. 1, s. 17]

(3) Where a record of a company is maintained in a language other than the English language, the company shall, on demand by the Service, produce, at its own expense, a translation in English language, which shall be certified by a sworn translator.

[2020 No. 1, s. 17]

(4) Any company that on request by the Service, fails to provide any record or book prescribed under subsections (I) - (3) shall be liable to pay as penalty-

(a) ₦100,000 in the first month in which the failure occurs ; and

(b) ₦50.000 for each subsequent month in which the failure continues.

[2020 No. 1, s. 17]

(5) Where, in the opinion of the Service, a company fails or refuses to maintain books or records of accounts that are consistent with the provisions of subsections (I), (2) and (3) or adequate for the purposes of tax, the Service may, by notice in writing, require it to maintain such records, books and accounts as the Service considers adequate, in such form and language as may be specified in the notice.

[2020 No. 1, s. 17]

(6) Any direction of the Service made under subsection (5) shall be subject to objection and appeal in like manner as an assessment.

[2020 No. 1, s. 17]

(7) Any book or record required to be kept under this section shall be kept for a period of at least six years after the year of assessment in which the income relates.

[2020 No. 1, s. 17]

64. Power to enter and search premises

(1) Where in respect of any trade or business carried on in Nigeria by any company (whether or not part of the operations is carried on outside Nigeria), the Service-

- (a) is satisfied that there is reasonable ground for suspecting that an offence involving any form of total or partial non-disclosure of information or any irregularity or offence in connection with, or in relation to tax, has been committed; and
- (b) is of the opinion that evidence of the offence or irregularity is to be found in the premises, registered office, any other office, or place of management of the company or in the residence of the principal officer, factor, agent or representative of the company,

the Service may authorise an officer of the Service to enter if necessary by force the premises, registered office, any other office or place of management or the residence of the principal officer, factor or agent or representative of the company, at any time from the date of such authorisation by the Service and conduct a search.

[1991 No. 21.]

- (2) An authority to enter the premises, registered office, any other office or place of management or residence of the principal officer, agent or factor of a company, to conduct a search, shall be in the form contained in the Sixth Schedule to this Act, and such authority shall be sufficient warrant to search, seize and remove any records and documents found on such premises, office or, residence of the principal officer, agent or factor of the company, whether or not belonging to the company.

[Sixth Schedule. 1991 No. 21.]

- (3) On entering the premises with a warrant under this section, the officer may seize and remove anything whatsoever found therein which he has reasonable cause to believe may be required for the purpose of arriving at a fair and correct tax chargeable on the company or as evidence for the purposes of proceedings in respect of such an offence as is mentioned in subsection (1) of this section.

[1991 No. 21.]

- (4) For the purpose of this section, an officer authorised by the Service to execute any warrant of search under this section may call to his assistance a police officer and it shall be the duty of the police officer when so required to aid and assist in the execution of any warrant, to obtain documents for the purposes of the tax chargeable or to be charged on the company or of the proceedings in respect of the offence referred to in section (1) of this section.

[1991 No. 21.]

- (5) Where an entry to a premises has been made with a warrant under this section and the officer making the entry has seized anything under the authority of the warrant, he shall immediately before the seizure if required by either-

- (a) the principal officer of the company; or
- (b) any other person who has had the possession or custody of those things, provide that principal officer or person with the list of items seized or surrendered.

[1991 No. 21.]

- (6) It shall be the responsibility of any person on whom such warrant as mentioned in subsection (2) of this section is served to:

- (a) co-operate fully with the person or persons authorised to conduct a search by allowing easy access to the premises to be searched and to the items or documents that may be required for the investigation;
- (b) answer all questions and queries put to him in the cause of the search;
- (c) put in accessible position and facilitate the removal of all items that may be required to assist the investigation.

[1991 No. 21.]

- (7) Any principal officer, agent, factor or representative of the company on whom a warrant of search is served who refuses to co-operate with the person or persons authorised to search or does anything tantamount to failure to co-operate or engages in an act or acts resulting in abuse, physical assault or similar misbehaviour, shall be guilty of an offence and liable on conviction to a fine of ₦10,000 or to imprisonment of not less than 6 months or to both such fine and imprisonment.

[1991 No. 21.]

- (8) Either prior to or during or after a warrant of search is being or has been served or executed on a principal officer, agent, factor or representative of the company, such principal officer, factor or agent may also be called upon to an interview before an officer of the Service to answer any query or question in connection with the activities of the company as would enable the Service to arrive at a fair and correct tax liability of the company.

[1991 No. 21.]

PART X

Assessments

65. Service to make assessments

- (1) The Service shall proceed to assess every company chargeable with tax as soon as may be after the expiration of the time allowed to such company for the delivery of the audited accounts and return provided for in section 55 of this Act or otherwise as it appears to the Service practicable so to do.
- (2) Where a company has delivered audited accounts and return, the Service may-
 - (a) accept the audited accounts and return and make an assessment accordingly; or
 - (b) refuse to accept the return and, to the best of its judgement, determine the amount of the total profits of the company and make an assessment accordingly.
- (3) Where a company has not delivered a return and the Service is of the opinion that such company is liable to pay tax, the Service may, according to the best of its judgement, determine the amount of the total profits of such company and make an assessment accordingly, but such assessment shall not affect any liability otherwise incurred by such company by reason of its failure or neglect to deliver a return.

- (4) Nothing in this section shall prevent the Service from making an assessment upon a company for any year before the expiration of the time within which such company is required to deliver a return or to give notice under the provisions of section 55 of this Act, if the Service or any officer of the Federal Inland Revenue Service duly authorised by the Service considers such assessment to be necessary for any reason of urgency.
- (5) In this section, the reference to a return shall be construed as a reference to the accounts and return submitted pursuant to section 55 of this Act.

66. Additional assessments

- (1) If the Service discovers or is of the opinion at any time that any company liable to tax has not been assessed or has been assessed at a less amount than that which ought to have been charged, the Service may, within the year of assessment or within six years after the expiration thereof and as often as may be necessary, assess such company at such amount or additional amount, as ought to have been charged, and the provisions of this Act as to notice of assessment, appeal and other proceedings shall apply to such assessment or additional assessment and to the tax charged thereunder:

Provided that where any form of fraud, wilful default or neglect has been committed by or on behalf of any company in connection with any tax imposed under this Act or under the Companies Income Tax Act 1961 the Service may at any time and as often as may be necessary, assess such company at such amount or additional amount as may be necessary for the purpose of making good any loss of tax attributable to the fraud, wilful default or neglect.

[1961 No. 22.]

- (2) For the purpose of computing under subsection (1) of this section the amount or the additional amount which ought to have been charged, all relevant facts consistent with the proviso to section 76 of this Act shall be taken into account even though not known when any previous assessment or additional assessment on the same company for the same year was being made or could have been made.

67. Lists of companies assessed

- (1) The Service shall, as soon as possible, prepare lists of companies assessed to tax.
- (2) Such lists, herein called the assessment lists, shall contain the names and the addresses of the companies assessed to tax, the name and address of any person in whose name any such company is chargeable, the amount of the total profits of each company, the amount of tax payable by it, and such other particulars as may be determined by the Service.
- (3) Where complete copies of all notices of assessment and all notices amending assessments are filed in the offices of the Service they shall constitute the assessment lists for the purposes of this Act.

68. Service of notice of assessment

The Service shall cause to be served on or sent by registered post, courier service, email or any

other electronic means, as directed by the Service in any notice issued pursuant to this Act or any other relevant law to each company, or person in whose name a company is chargeable, whose name appears on the assessment lists, a notice stating the amount of the total profits, the tax payable, the place at which such payment should be made, and setting out the rights of the company under the next following section.

[2020 No. 1, s. 18]

69. Revision of assessment in case of objection

- (1) If any company disputes the assessment it may apply to the Service, by notice of objection in writing delivered in person, by courier service, email or any other electronic means, as directed by the Service in any notice issued pursuant to this Act or any other relevant law, to review and to revise the assessment made upon it.

[2020 No. 1, s. 19]

- (2) An application under subsection (1) of this section shall-

(a) be made within thirty days from the date of service of the notice of assessment; and

(b) contain the ground of objection to the assessment, that is-

(i) the amount of assessable and total profits of the company for the relevant year of assessment; and

(ii) the amount of tax payable for the year,

which the company claims should be stated on the notice of assessment.

[1996 No. 30.]

- (3) If the Service is satisfied that owing to absence from Nigeria, the person in whose name an assessment is made is unable to make an application within the thirty days specified in subsection (2) of this section, it shall extend the time for making the application to such time as may be reasonable in the circumstances.

[1996 No. 30.]

- (4) On receipt of the notice of objection referred to in subsection (1) of this section, the Service may require the company giving the notice of objection to furnish such particulars as the Service may deem necessary and to produce all books or other documents relating to the profits of the company, and may summon any person who may be able to give evidence respecting the assessment to attend for examination by an officer of the Federal Inland Revenue Service on oath or otherwise.

- (5) In the event of any company assessed, which has objected to an assessment made upon it, agreeing with the Service as to the amount at which it is liable to be assessed, the assessment shall be amended accordingly, and notice of the tax payable shall be served upon such company:

- (6) Provided that if an applicant for revision under the provisions of subsection (1) of this section

fails to agree with the Service the amount at which the company is liable to be assessed, the Service shall give notice of refusal to amend the assessment as desired by such company and may revise the assessment to such amount as the Service may, according to the best of its judgement, determine and give notice of the revised assessment and of the tax payable together with notice of refusal to amend the revised assessment and, wherever requisite, any reference in this Act to an assessment or to an additional assessment shall be treated as a reference to an assessment or to an additional assessment as revised under the provisions of this proviso.

70. Errors and defects in assessment and notice

- (1) No assessment, warrant or other proceeding purporting to be made in accordance with the provisions of this Act shall be quashed or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act or any enactment amending the same, and if the company assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.
- (2) An assessment shall not be impeached or affected-
 - (a) by reason of a mistake therein as to-
 - (i) the name of a company liable or of a person in whose name a company is chargeable; or
 - (ii) the description of any profits; or
 - (iii) amount of tax charged;
 - (b) by reason of any variance between the assessment and the notice thereof:

Provided that in cases of assessment the notice thereof shall be duly served on the company intended to be charged or the person in whose name such company is chargeable and such notice shall contain, in substance and effect, the particulars on which the assessment is made.

PART XI

Appeals

[EDITORIAL NOTE: In terms of section 18 (2) of Act No. 56 of 2007, appeals shall be as provided in the Federal Inland Revenue Service Act.]

71 to 75 inclusive. *[Deleted by 2007 No. 56, s. 18 (1).]*

76. Assessments to be final and conclusive

Where no valid objection or appeal has been lodged within the time limited by section 69, 72 or 75 of this Act as the case may be, against an assessment as regards the amount of the total profits

assessed thereby, or where the amount of the total profits has been agreed to under subsection (5) of section 69 of this Act, or where the amount of such total profits has been determined on objection, revision under the proviso to subsection (5) of section 69 of this Act, or on appeal, the assessment as made, agreed to, revised or determined on appeal, as the case may be, shall be final and conclusive for all purposes of the Act as regards the amount of such total profits; and if the full amount of the tax in respect of any such final and conclusive assessment is not paid within the appropriate period or periods prescribed in this Act, the provisions thereof relating to the recovery of tax, and to any penalty under section 85 of this Act, shall apply to the collection and recovery thereof subject only to the set-off of the amount of any tax repayable under, any claim, made under any provision of this Act, which has been agreed to by the Service or determined on any appeal against a refusal to admit any such claim:

Provided that-

- (a) where an assessment has become final and conclusive, any tax overpaid shall be repaid;
- (b) nothing in section 69 or in Part XI of this Act shall prevent the Service from making any assessment or additional assessment for any year which does not involve re-opening any issue, on the same facts, which has been determined for that year of assessment under subsection (5) of section 69 of this Act by agreement or otherwise on appeal.

PART XII

Collection, recovery and repayment of tax

77. Time within which tax (including provisional tax) is to be paid

[2021 No. 1, s. 13]

- (1) Tax charged by any assessment which is not or has not been the subject of an objection or appeal by the company shall be payable (after the deduction of any amount to be set-off for the purposes of collection under any provision of this Act) at the place stated in the notice of assessment within 30 days after service of such notice upon the company:

Provided that the Service in its discretion may extend the time within which payment is to be made.

- (2) Subject to the provisions of subsection 69 (3) of this Act, collection of tax in any case where notice of an objection or appeal has been given by the company shall remain in abeyance until
b
- (3) Every Company shall make payment of tax due on or before the due date of filing, in one lump sum or in installments:

Provided that the final installments must be paid on or before the due date of filing.

- (5) Where a company pays its tax 90 days before the due date as provided under Section 55 of this Act, such company shall be entitled to a bonus of-

(a) 2%, if such company is a medium-sized company; and

(b) 1% for any other company;

on the amount of tax paid, which shall be available as a credit against its future taxes.

(6) Any balance of taxes unpaid as at the due date shall attract interest and penalties as provided in this Act or any other relevant law for failure to pay on the due date in accordance.

(7) Notwithstanding anything to the contrary in any law, income tax payable under sections 52, 53 and 55 of this Act shall be paid to the Service in the currency in which the income giving rise to the tax was derived and paid to the company making the return.

78. Deduction of tax from interest, etc.

(1) Where any interest other than interest on inter-bank deposits or royalty becomes due from one company to another company or to any person to whom the provisions of the Personal Income Tax Act apply, the company making such payment shall, at the date when payment is made or credited, whichever first occurs, deduct there from tax at the rate prescribed in subsection (2) of this section and shall forthwith pay over to the Service the amount so deducted.

(Cap.P8)

(2) The rate at which tax is to be deducted in this section shall be 10 per cent

[1996 No. 30.]

(3) For the purposes of this section, person authorised to deduct tax includes government departments, parastatals, statutory bodies, institutions and other establishments approved for the operation of Pay As You Earn system.

(4) The tax, when paid over to the Service, shall be the final tax due from a -

(a) non-resident recipient of the payment; and

(b) unit trust recipient of the payment.”

[2021 No. 1, s.14]

(5) In accounting for the tax so deducted to the Service, the company shall state in writing the following particulars, that is to say-

(a) the gross amount of the interest or royalty;

(b) the name and address of the recipient;

(c) and the amount of tax being accounted for.

- (6) The provisions contained in subsection (1) – (5) shall not apply to a lender when making compensating payments, which qualify as interest under section 9(1)(c) of this Act, to an approved agent that is due to a borrower in a Regulated Securities Lending Transaction:

Provided that nothing in this subsection, shall be construed as exempting the approved agent from the provisions of subsection (1) - (5) when making the same payments to the borrower or as exempting the lender from deducting tax when making the payments directly to the borrower.

[2019 No. 1, s. 19]

79. Deduction of tax on rent

- (1) Where any rent becomes due from or payable by one company to another company or to any person to whom the provisions of the Personal Income Tax Act apply, the company paying such rent shall, at the date when the rent is paid or credited, whichever first occurs, deduct there from tax at the rate prescribed under subsection (2) of this section and shall forthwith pay over to the Service the amount so deducted.

[Cap. P8.]

- (2) The rate at which tax is to be deducted under this section shall be 10 percent.

[1996 No.30.]

- (3) For the purposes of this section, person authorised to deduct tax includes Government departments, parastatals, statutory bodies, institutions and other establishments approved for the operation of Pay As You Earn system.

- (4) The tax, when paid over to the Service, shall be the final tax due from a non-resident recipient of the payment.

- (5) In accounting for the tax so deducted to the Service, the company shall state in writing the following particulars, that is to say-

- (a) the gross amount of the rent payable per annum;
- (b) the name and address of the recipient and the period in respect of which such rent has been paid or credited;
- (c) the address and accurate description of the property concerned; and
- (d) the amount of tax being accounted for.

- (6) Any reference to rent in this section shall be construed whenever necessary as including payments for the use or hire of any equipment, payments for charter vessels, ship or aircraft and all such other payments for the use of or hire of movable and immovable property.

80. Deduction of tax from dividend

- (1) Where any dividend or such other distribution becomes due from or payable by a Nigerian company to any other company or to any person to whom the provisions of the Personal

Income Tax Act apply, the company paying such dividend or making such distribution shall, at the date when the amount is paid or credited, whichever first occurs; deduct there from tax at the rate prescribed under subsection (2) of this section and shall forthwith pay over to the Service the amount so deducted.

[Cap. P8.]

- (2) The rate at which tax is to be deducted under this section shall be 10 percent.
[1996 No. 30.]
- (3) Dividend received after deduction of tax prescribed in this section shall be regarded as franked investment income of the company receiving the dividend and shall not be charged to further tax as part of the profits of the recipient company. However, where such income is re-distributed and tax is to be accounted for on the gross amount of the distribution in accordance with subsection (1) of this section, the company may set off the withholding tax which it has itself suffered on the same income.
- (4) The tax, when paid over to the Service, shall be the final tax due from a non-resident recipient of the payment.
- (5) The provisions contained in subsection (1) – (5) of this section shall not apply to-
[2019 No. 1, s. 20]
 - (a) a company or person making any distribution or dividend payment to a real estate investment company;
 - (b) a borrower making compensating payments to its approved agent or to a lender, provided that such payments qualify as dividends under section 9(1)(c) of this Act; and
 - (c) an approved agent making compensating payments received from a Borrower, which qualify as dividend under section 9(1)(c) of this Act, to a lender
- (6) Nothing in this section shall be construed to exempt a real estate investment company from deducting tax at source from the dividend it distributes to its own shareholders.
[2019 No. 1, s. 20]

81. Deduction of tax at source

[2021 No. 1, s 15]

- (1) Income tax assessable on any company, whether or not an assessment has been made, shall, if the Service so directs, be recoverable from any payments made by any person to such company.
- (2) Any such direction may apply to any person or class of persons specified in such direction, either with respect to all companies or a company or class of companies, liable to payment of income tax:

Provided that in the case of road, bridges, building and power plant construction contract, the rate shall not exceed 2.5%.

- (3) Any such direction under subsection (1) of this section shall be in writing addressed to the person or be published in the Federal Gazette and shall specify the nature of payments and the rate at which tax is to be deducted.
- (4) In determining the rate of tax to be applied to any payments made to a company, the Service may take into account-
 - (a) any assessable profits of that company for the year arising from any other source chargeable to income tax under this Act; and
 - (b) any income tax or arrears of tax payable by that company for any of the six preceding years of assessment.
- (5) Income tax recovered under the provisions of this section by deduction from payments made to a company shall be set off for the purpose of collection against tax charged on such company by an assessment.
- (6) Every person required under any provisions of this Act to make any deduction from payments made to any company shall account to the Service in such manner as the Service may prescribe for the deduction so made.
- (7) Any excess payment arising from compliance with sections 78,79, 80 and 81 of this Act over the assessment under section 65 of this Act shall be refunded by the Service within ninety days of the assessment if duly filed with the option to set off against future taxes.
- (8) The provisions of this section shall not apply to compensating payments made under a Registered Securities Lending Transaction
- (9) The Minister of Finance on the advice of the Service may make regulations for the carrying out of the provisions of this section.

82. Penalty for failure to deduct tax

Any person who being obliged to deduct any tax under section 78, 79, 80 or 81 of this Act fails to deduct or having deducted fails to pay to the Service within twenty-one days from the date the amount was deducted or the time the duty to deduct arose, shall be guilty of an offence and shall be liable to a penalty of 100 percent per annum of the tax withheld or not remitted, as the case may be.

[1996 No. 31, 2007 No. 56, s. 20.]

83. Accountant-General of the Federation to deduct tax

Where the person referred to under section 82 is a Ministry, Department, parastatal, institution or an agency of the Federal or a State Government or is a local government, the Service may authorise the Accountant-General of the Federation in writing to deduct from the allocation of such Federal Ministry, Department, parastatal, institution or agency of the State Government or local government such amount of tax deductible plus interest at the prevailing commercial rate.

[1993 No. 3.]

84. Payment of tax deducted

Income tax deducted under sections 78, 79, 80 and 81 of this Act shall be paid to the Service in the currency in which the deduction was made.

[1993 No. 3.]

85. Addition for non-payment of tax and enforcement of payment

- (1) Subject to the provisions of subsection (3) of this section, if any tax is not paid within the periods prescribed in section 77 of this Act-
 - (a) a sum equal to ten *per centum* per annum of the amount of the tax payable shall be added thereto, and the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of such sum;
 - (b) the tax due shall carry interest at bank lending rate from the date when the tax becomes payable until it is paid, and the provisions of this Act relating to collection and recovery of tax shall apply to the collection and recovery of the interest;
[1991 No. 63.]
 - (c) the Service shall serve a demand note upon the company or person in whose name the company is chargeable and if payment is not made within one month from the date of the service of such demand note, the Service may proceed to enforce payment as hereinafter provided;
 - (d) an addition imposed under this subsection shall not be deemed to be part of the tax paid for the purpose of claiming relief under any of the provisions of this Act.
- (2) Any company which without lawful justification or excuse, the proof whereof shall lie on the company, fails to pay the tax within the period of one month prescribed in paragraph (b) of subsection (1) of this section, shall be guilty of an offence against this Act.
- (3) The Service may, for any good cause shown, remit the whole or any part of the addition due under subsection (1) of this section.

86. Power to distrain for non-payment of tax

- (1) Without prejudice to any other power conferred on the Service for the enforcement of payment of tax due from a company, where an assessment has become final and conclusive and a demand note has, in accordance with the provisions of this Part of this Act, been served upon the company or upon the person in whose name the company is chargeable, then, if payment of the tax is not made within the time limited by the demand note, the Service may in the prescribed form, for the purpose of enforcing payment of the tax due-
 - (a) distrain the taxpayer by his goods or other chattels, bonds or other securities;

(b) distrain upon any land, premises, or place in respect of which the taxpayer is the owner and, subject to the following provisions of this section, recover the amount of tax due by sale of anything so distrained.

(2) The authority to distrain under this section shall be in the form contained in the Fourth Schedule to this Act, and such authority shall be sufficient warrant and authority to levy by distress the amount of tax due.

[Fourth Schedule.]

(3) For the purposes of levying any distress under this section, any officer authorised in writing by the Service may execute any warrant of distress and if necessary break open any building or place in the day time for the purpose of levying such distress, and he may call to his assistance any police officer and it shall be the duty of that police officer when so required to aid and assist in the execution of any warrant of distress and in levying the distress.

(4) Things distrained under this section may, at the cost of the taxpayer, be kept for fourteen days and at the end of that time if the amount due in respect of the tax and the cost and charges of and incidental to the distress are not paid, they may, subject to subsection (6) of this section, be sold at any time thereafter.

(5) Out of the proceeds of any such sale there shall, in the first place, be paid the cost or charges of and incidental to the (sale and keeping of the) distress, and disposal there under and in the next place the amount due in respect of the tax; and the balance (if any) shall be payable to the taxpayer upon demand being made by him or on his behalf within one year of the date of the sale.

(6) Nothing in this section shall be construed so as to authorise the sale of any immovable property without an order of a High Court, made on application in such form as may be prescribed by rules of court.

87. Action for tax by Service and refusal of clearance where tax is in default

(1) Tax may be sued for and recovered in a court of competent jurisdiction at the place, stated in the notice of assessment as being the place at which payment should be made, by the Service in its official name with full cost of action from the company charged therewith as a debt due to the Government of the Federation.

(2) For the purposes of this section, a court of competent jurisdiction shall include a magistrate's court, which court is hereby invested with the necessary jurisdiction, provided that the amount claimed in any action does not exceed the amount of the jurisdiction of the magistrate concerned with respect to actions for debt.

(3) In any action brought under subsection (1) of this section, the production of a certificate signed by any person duly authorised by the chairman of the Service giving the name and address of the defendant and the amount of tax due shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for the said amount.

- (4) In addition to any other powers of collection and recovery provided in this Act, the Service may, where the tax charged on the profits of any company which carries on the business of ship owner or charterer has been in default for more than three months, whether such company is assessed directly or in the name of some other person, issue to the Nigerian Customs Service or other authority by whom clearance may be granted, a certificate containing the name or names of the said company and particulars of the tax in default, and on receipt of such certificate, the said Nigerian Customs Service or other authority shall be empowered and is hereby required to refuse clearance from any port in Nigeria to any ship owned wholly or partly or chartered by such company until the said tax has been paid.
- (5) No civil or criminal proceedings shall be instituted or maintained against the said Nigerian Customs Service or other authority in respect of a refusal of clearance under this section, nor shall the fact that a ship is detained under this section affect the liability of the owner, charterer, or agent to pay harbour dues and charges for the period of detention.

88. Attendance of director, etc., at proceedings, etc

- (1) The court, before which the Service has sued a company for non-payment of tax, may issue a bench warrant on a director or other officer of the company to compel the director or officer to appear at every proceeding on the case until the final disposal of the case.

[1996 No. 30.]

- (2) Where the Service has obtained judgment against a company for non-payment of tax and the judgment debt remains unpaid six months after the judgment, the court may, on the application of the Service, issue a bench warrant on a director or other officer of the company to compel the director or officer to appear in court and show cause why the judgment debt has not been paid.

[1996 No. 30.]

89. Remission of tax

The President may remit, wholly or in part, the tax payable by any company if he is satisfied that it will be just and equitable to do so.

90. Relief in respect of error or mistake

- (1) If any company which has paid tax for any year of assessment alleges that any assessment made upon it for that year was excessive by reason of some error or mistake in the return, statement or account made by or on behalf of the company for the purposes of the assessment, it may, at any time not later than six years after the end of the year of assessment within which the assessment was made, make an application in writing to the Service for relief.
- (2) On receiving any such application, the Service shall inquire into the matter and shall, subject to the provisions of this section, give by way of repayment of tax such relief in respect of the error or mistake as appears to be reasonable and just:

Provided that no relief shall be given under this section in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where the return, statement or account was in fact made on the basis or in accordance with the practice of the

Service generally prevailing at the time when the return, statement or account was made.

- (3) In determining any application under this section, the Service shall have regard to all the relevant circumstances of the case, and in particular shall consider whether the granting of relief would result in the exclusion from charge to tax of any part of the profits of the company, and for this purpose the Service may take into consideration the liability of the company and assessments made upon it in respect of other years.
- (4) A determination by the Service under this section shall be final and conclusive.

91. Repayment of tax

- (1) Save as is otherwise in this Act expressly provided, no claim for repayment of tax shall be allowed unless it is made in writing within six years after the end of the year of assessment to which it relates.
- (2) The Service shall give a certificate of the amount of any tax to be repaid under any of the provisions of this Act or under any order of a court of competent jurisdiction and upon the receipt of the certificate, the Accountant-General of the Federation shall cause repayment to be made in conformity therewith.

PART XIII

92. Penalty for offences

- (1) Any person guilty of an offence against this Act or any person who contravenes or fails to comply with any of the provisions of this Act or of any rule made there under for which no other penalty is specifically provided, shall be liable on conviction to a fine of ₦420,000.00, and without prejudice to section 55 (4) or (5), where such offence is the failure to furnish a statement or information or to keep records required, a further sum of ₦2,000.00 for each and every day during which such failure continues, and in default of payment to imprisonment for six months, the liability for such further sum to commence from the day following the conviction, or from such day thereafter as the court may order.

[2007 No. 56, s. 21 (a) (i) and (ii).]

- (2) Any person who-
 - (a) fails to comply with the requirements of a notice served on him under this Act; or
 - (b) without sufficient cause fails to attend in answer to a notice or summons served on him under this Act or having attended fails to answer any question lawfully put to him,

shall be guilty of an offence against this Act.

- (3) Notwithstanding any of the provisions of the Criminal Procedure Act or any other applicable law, a magistrate may dispense with personal attendance of the defendant if he pleads guilty in writing or so pleads by a legal practitioner.

[Cap. C41.]

- (4) In the case of failure by a company to comply with the requirements of any notice given by the Service under the provisions of section 55 or 58 of this Act for the purpose of the tax to be

charged upon the company for any year of assessment, the Service may, in lieu of the institution of proceedings under subsection (2) of this section, impose a penalty upon the company of an amount equal to the tax chargeable upon the company for the preceding year of assessment:

Provided that-

- (a) written notice of the penalty shall be served upon the company; and
- (b) any amount of such penalty remaining unpaid thirty days after service of such notice may be sued for and recovered in a court of competent jurisdiction by the Service in its official name with full costs of action from the company liable thereto as a debt due to the Government of the Federation; and
- (c) a certificate signed by an officer of the Federal Inland Revenue Service duly authorised by the Service setting out the name and address of such company, the date of service of the said notice, and the amount of the penalty remaining unpaid, shall be sufficient authority for the court to give judgment for that amount; and
- (d) the Service may remit the whole or any part of such penalty, before judgment, for any reason which appears to it to be adequate.

[2007 No. 56, s. 21 (b).]

93. *(Deleted by 2007 No. 56, s. 22.)*

94. False statements and returns

(1) Any person other than a company who-

- (a) for the purpose of obtaining any deduction, set-off, relief or repayment in respect of tax for any company, or who in any return, account or particulars made or furnished with reference to tax, knowingly makes any false statement or false representation; or
- (b) aids, abets, assists, counsels, incites or induces any other person-
 - (i) to make or deliver any false return or statement under this Act; or
 - (ii) to keep or prepare any false accounts or particulars concerning and profits on which tax is payable under this Act; or
 - (iii) unlawfully to refuse or neglect to pay tax,

shall be guilty of an offence and shall be liable on conviction to a fine of ₦1,000 or to imprisonment for five years, or to both such fine and imprisonment.

(2) The Service may compound any offence under this section and with the leave of the court may before judgment stay or compound any proceedings thereunder.

95. Penalties for offences by authorised and unauthorised persons

Any person who-

- (a) being a person appointed for the due administration of this Act or employed in connection with the assessment and collection of the tax who-
 - (i) demands from any company an amount in excess of the authorised assessment of the tax; or
 - (ii) withholds for his own use or otherwise any portion of the amount the tax collected; or
 - (iii) renders a false returns, whether orally or in writing, of the amount of tax collected or received by him; or
 - (iv) defrauds any person, embezzles any money, or otherwise uses his position as to deal wrongfully with the Service; or
- (b) not being authorised under this Act to do so, collects or attempts to collect the tax under this Act,

shall be guilty of an offence and be liable on conviction to a fine of ₦600 or to imprisonment for three years or to both such fine and imprisonment.

96. Tax to be payable notwithstanding proceedings for penalties

The institution of proceedings for, or the imposition of a penalty, fine or term of imprisonment under this Act shall not relieve any company from liability to payment of any tax for which it is or may become liable.

97. Prosecution to be with the sanction of the Service

No prosecution in respect of an offence under section 93, 94 or 95 may be commenced except at the instance of or with the sanction of the Service.

98. Savings for criminal proceedings

The provisions of this Act shall not affect any criminal proceedings under any other enactment.

99. Place of an offence

An offence under this-Act shall be deemed to occur in the town where the registered office of the company is situated or at such other place as the Service may decide.

[1996 No. 30.]

PART XIV

Miscellaneous

100. Power to alter rate of tax, etc.

The National Assembly may on the proposal by the President by a resolution of each of the Houses of National Assembly impose, increase, reduce, withdraw or cancel any rate of tax, duty or fee chargeable specified in section 29 and the Second Schedule to the Act in accordance with section 59 (2) of the Constitution of the Federal Republic of Nigeria, 1999.

[2007 No. 56, s. 23.]

101. Tax clearance certificate

(1) Whenever the Service is of the opinion that tax assessed on profits or income of a person has been fully paid or that no tax is due on such profits or income, it shall issue a tax clearance certificate to the person within two weeks of the demand for such certificate by that person or, if not, give reasons for the denial.

[1993 No. 3.]

(2) Any Ministry, department or agency of Government or any commercial bank with whom any person has any dealing with respect to any of the transactions mentioned in subsection (4) of this section, shall demand from such person a tax clearance certificate of three years immediately preceding the current year of assessment.

(3) A tax clearance certificate shall disclose in respect of the last three years of assessment-

- (a) total profits or chargeable income;
- (b) tax payable;
- (c) tax paid;
- (d) tax outstanding or alternatively a statement to the effect that no tax is due.

(4) The provisions of subsection (1) of this section shall apply in relation to the following, that is-

- (a) application for government loan for industry or business;
- (b) registration of motor vehicles;
- (c) application for firearms licence;
- (d) application for foreign exchange or exchange control permission to remit funds outside Nigeria;
- (e) application for certificate of occupancy;

- (f) application for award of contracts by Government and its agencies and, registered companies;
 - (g) application for trade or business licence;
[2007 No. 56, s. 24 (a).]
 - (h) application for approval of building plans;
 - (i) application for transfer of real property;
 - (j) application for import or export licence;
 - (k) application for plot of land;
 - (l) application for agent licence;
[2007 No. 56, s. 24 (b).]
 - (m) application for pools or gaming licence;
 - (n) application for registration as a contractor;
 - (o) application for distributorship;
 - (p) stamping of guarantor's form for Nigerian passport;
 - (q) application for registration of a limited liability company or of a business name;
 - (r) application for allocation of market stalls;
 - (s) stamping of statement of the nominal share capital of a company to be registered and any increase in the registered share capital of any company; and
[1991 No. 21.]
 - (t) stamping of statement of the amount of loan capital.
[1991 No. 21.]
- (5) An applicant for exchange control permission to remit funds to a non-resident recipient in respect of income accruing from rent, dividend, interest, royalty, fees, or any other similar income shall be required to produce a tax clearance certificate to the effect that tax has been paid on funds in respect of which the application is sought or that no tax is payable, whichever is the case.
- (6) When a person who has deducted any tax under any provisions of this Act fails to pay the tax so deducted to the appropriate tax authority, no tax clearance may be issued to that person even if he has fully discharged his own tax liability under this Act.

- (7) Where a person is able to produce evidence that he suffered tax by deduction at source and that the assessment year to which the tax relates falls within the period covered by the tax clearance certificate, such a person may not be denied a tax clearance certificate:

Provided that any balance of tax after credit has been given for the tax so deducted has been fully paid.

[1993 No. 3.]

102. Conduct of proceedings

Any officer of the Federal Inland Revenue Service duly authorised in writing in that regard by the chairman of the Service, may prosecute or conduct on behalf of the Service, any prosecution or other proceedings arising under this Act in any court in the Federation.

103. Power to pay reward

The Service may with the approval of the Commissioner pay rewards to any person, not being a person employed in the Federal Inland Revenue Service in respect of any information which may be of assistance to the Service in the performance of its duties under this Act.

104. Repeals, transitional provisions, etc.

- (1) Subject to this section and without prejudice to the provisions of section 6 of the Interpretation Act, the Companies Income Tax Act 1961 shall, except where other provisions are made in that behalf in this Act, cease to have effect with respect to tax on the income or profits of companies for all years of assessment beginning after the 31st day of March 1977.

[Cap. 123. 1961 No. 22.]

- (2) Anything made or done, or having effect as if made or done, before the date of commencement of this Act under or pursuant to any provision of the Companies Income Tax Act 1961 by the Service and having any continuing or resulting effect with respect to the taxation of the profits of a company or any matter connected therewith, shall be treated and for all purposes shall have effect as if it were made or done by the Service under the corresponding provision of this Act.

- (3) All rules, orders, notices or other subsidiary legislation made under the Companies Income Tax Act 1961 shall continue to have effect as if made under the corresponding provisions of this Act.

[1961 No. 22.]

- (4) All references in the Personal Income Tax Act and in any other enactment to provisions of the Companies Income Tax Act 1961 shall be construed as references to the corresponding provisions of this Act.

[Cap. P8. 1961 No. 22.]

105. Interpretation

(1) In this Act, unless the context otherwise requires-

“approved agent” means any person approved by the Securities and Exchange Commission to function as an intermediary for the conduct of a Regulated Securities Lending Transaction;
[2019 No. 1, s. 22]

“bank” means an establishment authorized by the government to accept deposits, pay interest, clear checks, make loans, act as an intermediary in financial transactions, and provide other financial services to its customers or any other such institution as defined under the Banking and Other Financial Institutions Act, Cap. B3, Laws of the Federation of Nigeria, 2004;
[2019 No. 1, s. 22]

“banking” means business conducted or services offered by a bank;
[2019 No. 1, s. 22]

“borrower” means an approved borrower in a Regulated Securities Lending Transaction;
[2019 No. 1, s. 22]

“company” means any company or corporation (other than a corporation sole) established by or under any law in force in Nigeria or elsewhere;

“compensating payments” means any payments made in lieu of interest or dividend pursuant to a Regulated Securities Lending Transaction;
[2019 No. 1, s. 22]

“financial institutions” includes depository institutions, custodial institutions, investment institutions and insurance companies;
[2019 No. 1, s. 22]

“financial services” includes depository services, custodial services, investment services and insurance services;
[2019 No. 1, s. 22]

“foreign company” means any company or corporation (other than a corporation sole) established by or under any law in force in any territory or country outside Nigeria;

“gross turnover” means the gross inflow of economic benefits during the period arising in the course of the operating activities of an entity when those inflows result in increases in equity, other than increases relating to contributions from equity participants, including sales of goods, supply of services, receipt of interest, rents, royalties or dividends;
[2020 No. 1, s. 21]

“Joint Tax Board” means the Joint Tax Board established under the provisions of any enactment regulating the taxation of incomes of persons other than companies in Nigeria;

“large company” means any company which is not a small or medium-sized company.
[2019 No. 1, s. 22]

“lender” means an approved lender in a Regulated Securities Lending Transaction
[2019 No. 1, s. 22]

“medium-sized company” means a company that earns gross turnover greater than ₦25,000,000 but less than ₦100,000,000;
[2019 No. 1, s. 22]

“Minister” means the Minister charged with responsibility for finance;

“Nigerian company” means any company formed or incorporated under any law in Nigeria;
[2020 No. 1, s. 21]

“officers of the Service” includes any officer of the Federal Inland Revenue Service;
[1993 No.3.]

“persons” includes a company or body of persons;

“public character” with respect to any organisation or institution means organisation or institution-

(a) that is registered in accordance with relevant law in Nigeria; and

(b) does not distribute or share its profit in any manner to members or promoters.
[2020 No. 1, s. 21]

“real estate investment company” means for the purpose of this Act, a Company (including Real Estate Unit Trust) duly approved by the Securities and Exchange Commission as a Real Estate Investment Scheme in Nigeria;
[2021 No. 1, s. 16]

“recognised group of companies” means a group of companies as prescribed under the relevant accounting standard”
[2019 No. 1, s. 22]

“Regulated Securities Lending transaction” means any securities lending transaction conducted pursuant to rules made by the Securities and Exchange Commission;
[2019 No. 1, s. 22]

“Service” means the Federal Inland Revenue Service as defined in the Federal Inland Revenue Service (Establishment) Act, 2007;
[2019 No. 1, s. 22]

“small company” means a company that earns gross turnover of ₦25,000,000 or less;
[2019 No. 1, s. 22]

“tax” means the tax imposed by this Act;

“**year of assessment**” means a period of twelve months commencing on 1 January.

- (2) Any reference in this Act to any section, Part or Schedule not otherwise identified is a reference to that section, Part or Schedule of this Act.

106. Short title and application

- (1) This Act may be cited as the Companies Income Tax Act.
- (2) This Act shall, except where other provision is made in that behalf in this Act, apply in respect of tax charged for the year of assessment commencing on 1 April 1977 and each succeeding year of assessment.

SCHEDULES

FIRST SCHEDULE

[Section 3 (4).]

Powers or duties which the Service may, not delegate except to the Joint Tax Board with the consent of the Minister

1. In this schedule, any reference to powers and duties shall not include any part of any power or duty of the Service either to make enquiries or to carry out or give effect to any decision of the Service.
2. Subject to paragraph (b) of subsection (4) of section 3 of this Act, no power or duty of the Service specified or imported in the following provisions, namely-
 - (a) sections 1 (3), 7, 14 (2), 21, 22, 23 (1) (d), 29 (6), 29 (9), 42 (3), 42 (5), 43 (2) (b), 87 (4), 90, 91 (2), 93 (3) and 94 (2) of this Act, and in paragraphs 6 (2) and 18 of Schedule 2 thereto;
 - (b) section 13 of the Industrial Development (Income Tax Relief) Act;
[Cap. I7.]
 - (c) the powers of the Service to decide to take proceedings under subsection (3) of section 6 or to take or sanction proceedings under section 97 of this Act;
 - (d) the power of the Service to consider anything necessary under subsection (2) of section 3 of this Act;
 - (e) the power of the Service to authorise under subsections (3) and (4) of section 3 of this Act, shall be delegated to any other person.

SECOND SCHEDULE

Capital allowances

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Interpretation.
2. Provisions relating to mining expenditure.
3. Owner and meaning of “relevant interest”.
4. Sale of buildings.
5. Qualifying industrial building expenditure.
6. Initial allowances
7. Annual allowances.
8. Asset to be in use at end of basis period.
9. Balancing allowances.
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11. Residue.
12. Meaning of “disposed of”.
13. Value of an asset.
14. Apportionment.
15. Part of an asset.
16. Extension of meaning of “in use”.
17. Exclusion of certain expenditure.
18. Application to lessors.
19. Asset used or expenditure incurred partly for the purposes of a trade or business.

20. Disposal without change of ownership.
21. Meaning of “allowances made”.
22. Claims for allowances.
23. Election in double taxation cases.
24. Manner of making allowances and charges.

TABLE I

Initial allowances

TABLE II

Annual allowances

1. Interpretation

(1) For the purposes of this Schedule-

“**basis period**” has the meaning assigned to it by the following provisions of this definition-

- (a) in the case of company to or on which any allowance of charge falls to be made in accordance with the provisions of this Schedule, its basis period for the year of assessment is the period by reference to the profits of which any assessable profits for that year fall to be computed under the provisions of section 29 of this Act;
- (b) such profits mean profits in respect of the trade or business in which there was used an asset in connection with which such allowance or charge falls to be made:

Provided that, in the case of any such trade or business-

- (i) where two basis periods overlap, the period common to both shall be deemed, except for the purpose of making an annual allowance, to fall in the basis period ending at the earlier date and in no other basis period;
- (ii) where two basis periods coincide, they shall be treated as overlapping, and the basis period for the earlier year of assessment shall be treated as ending before the end of the basis period for the later year of assessment;
- (iii) where there is an interval between the end of the basis period for one year of assessment and the basis period for the next year of assessment, then unless the second-mentioned year of assessment is the year in which, for the purposes of subsection (4) of section 29, such company permanently ceases to carry on the trade or business, the interval shall be deemed to be part of the second basis period; and

- (iv) where there is an interval between the end of the basis period for the year of assessment preceding that in which the trade or business permanently ceases, for the purposes of subsection (4) of section 29, to be carried on by such company and the basis period for the year in which it so ceases, the interval shall be deemed to form part of the first basis period,

“**concession**” includes a mining right and a mining lease;

“**lease**” includes an agreement for a lease where the term to be covered by the lease has begun, any tenancy and any agreement for the letting or hiring out of an asset, but does not include a mortgage, and the expression “**leasehold interest**” shall be construed accordingly and-

- (a) where, with the consent of the lessor, a lease of any asset remains in possession thereof after the termination of the lease without a new lease being granted to him, that lease shall be deemed for the purposes of this Schedule to continue so long as he remains in possession as aforesaid; and
- (b) where, on the termination of a lease of any asset, a new lease of that asset is granted to the lessee, the provisions of this Schedule shall have effect as if the second lease were a continuation of this first lease;

“**qualifying expenditure**” means, subject to the express provisions of this Schedule, expenditure incurred in a basis period which is-

- (a) capital expenditure (hereinafter called “qualifying plant expenditure”) incurred on plant, machinery or fixtures;
- (b) capital expenditure (hereinafter called “qualifying building expenditure”) incurred on the construction of buildings, structures or works of a permanent nature, other than expenditure which is included in sub-paragraph (a) or (c) of this definition;
- (c) capital expenditure (hereinafter called “qualifying mining expenditure”) incurred in connection with, or in preparation for, the working of a mine, oil well or other source of mineral deposits of a wasting nature (other than expenditure which is included in sub-paragraph (a) of this definition);
- (d) capital expenditure (hereinafter called “qualifying plantation expenditure”) incurred in connection with a plantation-
 - (i) on the clearing of land for planting;
 - (ii) on planting (other than replanting);
 - (iii) on the construction of any works {or buildings which are likely to be of little or no value when the source is no longer worked or, where the source is worked under a concession, which are likely to become valueless when the concession comes to an end to the company working the source immediately before the concession comes to an end;

- (iv) on the acquisition of, or of rights in or over, the deposits or on the purchase of information relating to the existing and extent of the deposits;
 - (v) on searching for or on discovering and testing deposits, or winning access thereto;
- (e) and for the purposes of this definition, where-
- (i) expenditure is incurred for the purposes of a trade or business by a company about to carry on such trade or business; and
 - (ii) that expenditure is incurred in respect of an asset owned by that company if that expenditure would have fallen to be treated as qualifying expenditure if it had been incurred by that company on the first day on which it carries on that trade or business, that expenditure shall be deemed to be qualifying expenditure incurred by it on that day;
- (f) capital expenditure, that is, qualifying research and development expenditure, incurred on equipment and facilities, patents, licences, secret formula or process or for information concerning industrial, commercial or scientific process; technical feasibility of products or processes and purchases, searching for and discovering and testing products or process for future market or use; and such other similar cost which has not brought into existence any asset;
 - (g) capital expenditure, that is, qualifying agricultural expenditure incurred on plant in use in agricultural trades and businesses within the meaning of section 11 of this Act;
 - (h) capital expenditure, that is, qualifying public transportation, motor vehicle expenditure, incurred on a fleet of buses of not less than three used for public transportation;
 - (i) capital expenditure (hereinafter called qualifying public transportation (intercity) new mass transit coach expenditure) incurred on new mass transit coach of 25 seats and above operated by a recognised corporate private establishment.
[1993 No. 3.]
 - (j) capital expenditure that is incurred on the development or acquisition of software or other such capital outlays on electronic applications
[2020 No. 1, s. 22]

“trade or business” means a trade or business or that part of a trade or business the profits of which are assessable under this Act.

Application of capital allowances to assets acquired under hire-purchase agreement, etc.

- (2) This Schedule shall apply in relation to any asset acquired by any hirer under a hire purchase agreement, the terms of which provide for the use and ultimate acquisition of the asset by the hirer, as it applied to an asset acquired by any owner of an asset for the purposes of his trade or business, but shall so apply subject to the following modifications, that is to say-

- (a) the qualifying expenditure within the meaning of sub-paragraph (1) (i) of paragraph 1 of this Schedule shall, in relation to any asset so acquired under that agreement, be limited to the amount of the instalment paid by the hirer during his basis period (within the meaning of those provisions) excluding in the computation of such qualifying expenditure any interest paid under the agreement;
- (b) any reference in the provisions as aforesaid to any owner of any asset shall be construed as including a reference to a hirer under the hire-purchase agreement and as excluding a reference to the person letting the goods to the hirer under the agreement.

2. Provisions relating to mining expenditure

(1) For the purposes of this Schedule, where-

- (a) qualifying mining expenditure has been incurred on the purchase of information relating to the existence and extent of the deposits or on searching for or on discovering and testing deposits or winning access thereto and such expenditure has been incurred for the purposes of a trade or business carried on by the company incurring the expenditure, or expenditure has been incurred for the purpose of trade or business about to be carried on by the company incurring the expenditure and such expenditure would have fallen to be treated as such qualifying mining expenditure if it had been incurred in a basis period; and
- (b) such expenditure has not brought into existence any asset; and
- (c) such trade or business consists of the working of a mine, oil well or other source of mineral deposits of a wasting nature,

then such expenditure shall be deemed to have brought into existence an asset owned by the company incurring the expenditure and in use for the purpose of such trade or business.

- (2) For the purpose of this Schedule, an asset in respect of which qualifying mining expenditure has been incurred by any company for the purposes of a trade or business carried on by it, and which has not been disposed of, shall be deemed not to cease to be used for the purpose of that trade or business so long as such company continues to carry on that trade or business.
- (3) So much of any qualifying mining expenditure incurred on the acquisition of rights in or over mineral deposits and on the purchase of information relating to the existence and extent of the deposits as exceeds the total of the original cost of acquisition of such rights and of the cost of searching for, discovering and testing such deposits prior to the purchase of such information, shall be left out of account for the purposes of this Schedule:
- (4) Provided that where such costs were originally incurred by a company which carried on a trade or business consisting, as to the whole or part thereof, in the acquisition of such rights or information with a view to the assignment or sale thereof, the price paid on such assignment or sale shall be substituted for the aforementioned costs.

3. Owner and meaning of “relevant interest”

- (1) For the purposes of this Schedule, where an asset consists of a building, structure or works, the owner thereof shall be taken to be the owner of the relevant interest in such building, structure or works.
- (2) Subject to the provisions of this paragraph, in this Schedule, the expression “the relevant interest” means, in relation to any expenditure incurred on the construction of a building, structure or works, the interest in such building, structure or works to which the person who incurred such expenditure was entitled when he incurred it.
- (3) Where, when he incurs qualifying building expenditure or qualifying mining expenditure on the construction of a building, structure or works, a person is entitled to two or more interests therein, and one of those interests is an interest which is reversionary on all the others, that interest shall be the relevant interest for the purposes of this Schedule.

4. Sale of buildings

Where capital expenditure has been incurred on the construction of a building, structure or works and thereafter the relevant interest therein is sold, any company which buys that interest shall be deemed, for all the purposes of this Schedule except the granting of initial allowances, to have incurred, on the date when the purchase price became payable, capital expenditure on the construction thereof equal to the price paid by it for such interest or to the original cost of construction whichever is the less:

Provided that where such relevant interest is sold before the building, structure or works has been used, the foregoing provisions of this paragraph shall have effect with respect to such sales with the omission of the words “except the granting of initial allowances” and the original cost of construction shall be taken to be the amount of the purchase price on such sale:

Provided also that where any such relevant interest is sold more than once before the building, structure or works is used, the provisions of the foregoing proviso shall have effect only in relation to the last of those sales.

5. Qualifying industrial building expenditure

For the purpose of this Schedule-

- (a) where but for this paragraph a company is entitled to an annual allowance in respect of qualifying building expenditure in respect of an asset in use, for the purposes of a trade or business carried on by it at the end of its basis period for any year of assessment, if that asset is an industrial building or structure in use as such at the end of its basis period for any such year then, in lieu of such allowance and qualifying building expenditure, the qualifying expenditure in respect of that asset shall be taken to mean “qualifying industrial building expenditure” for any allowances to be made to such company, in respect of that qualifying expenditure, for that year; and

- (b) **“industrial building or structure”** means any building or structure in regular use-
- (i) as a mill, factory, mechanical workshop, or other similar building, or as a structure used in connection with any such buildings;
 - (ii) as a dock, port, wharf, pier, jetty or other similar building structure;
 - (iii) for the operation of a railway for public use or for a water or electricity undertaking for the supply of water or electricity for public consumption; and
 - (iv) for the running of a plantation or for the working of a mine or other source of mineral deposits of a wasting nature.

6. Initial allowances

- (1) Subject to the provisions of this Schedule, where in its basis period for a year of assessment a company owning any asset has incurred in respect thereof qualifying expenditure wholly, exclusively, necessarily and reasonably for the purposes of a trade or business carried on by it, there shall be made to that company for the year of assessment in its basis period for which that asset was first used for the purposes of that trade or business an allowance (in this Schedule called “art initial allowance”) at the appropriate rate *per centum*, set forth in Table I to this Schedule, of such expenditure.
- (2) Where capital expenditure is incurred on the purchase of an asset and either purchaser is a person over whom the seller has control, or the seller is a person over whom the purchaser has control, or some other person has control over both the purchaser and the seller, then, the amount of any initial allowance to be made in respect of such expenditure shall be such an amount as the Service may determine to be just and reasonable having regard to all the circumstances relating to such asset and control:

Provided that any such amount shall not exceed the amount of the initial allowance which would have been allowable apart from the provisions of this sub-paragraph.

- (3) Where a company has incurred qualifying expenditure for the purchase of plants and machineries for the replacement of the old ones, there shall be allowed such company a once and for all 95 per cent capital allowances in the first year, with 5% retention as the book value until the final disposal of the asset:

Provided that the aggregate capital allowances granted in respect of any asset under this Schedule and under section 42 shall not exceed 95 per cent of the total cost of the asset.

[1996 No. 32.]

7. Annual allowances

- (1) Subject to the provisions of this Schedule, where in its basis period for a year of assessment, a company owning any asset has incurred in respect thereof qualifying expenditure wholly, exclusively, necessarily and reasonably for the purpose of a trade or business carried on by it, whether or not an initial allowance was made in respect of that qualifying expenditure, there

shall be made to that company for each year of assessment, in its basis period for which that asset was used for the purpose of that trade or business, an allowance (hereinafter called “an annual allowance” at the rate specified in respect thereof in Table 11 of this Schedule of such expenditure after the deduction of initial allowance where applicable:

Provided that an amount of ₦10 shall be retained in the accounts for tax purposes until the asset is disposed of:

Provided further that where the basis period for any year of assessment is a period of less than one year and such allowance for that year of assessment shall be proportionately reduced.

- (2) In the case of an asset in respect of which an allowance has been granted before the commencement of this sub-paragraph, an allowance shall be made in respect of the asset for the number of years which, if added to the number of years of assessment for which allowance has already been made, equals the number of years of assessment for which allowance is to be made under the provisions of sub-paragraph (1) of this paragraph:

Provided that if an allowance has been made for a number of years which is equal to or more than the number of years specified under sub-paragraph (1) of this paragraph, a single allowance shall be made for an amount which is ₦10 less than the residue of the qualifying expenditure for the year of assessment in which this sub-paragraph takes effect.

8. Asset to be in use at the end of basis period

An initial or an annual allowance in respect of qualifying expenditure incurred in respect of any asset shall only be made to a company for a year of assessment if at the end of its basis period for that year it was the owner of that asset and that asset was in use for the purposes of a trade or businesses carried on by that company.

9. Balancing allowances

Subject to the provisions of this Schedule, where in its basis period for a year of assessment, a company owning an asset, which has incurred in respect thereof qualifying expenditure wholly, exclusively, necessarily and reasonably for the purposes of a trade or business carried on by it, disposes of that asset an allowance (hereinafter called “a balancing allowance”) shall be made to that company for that year of the excess of the residue of that expenditure, at the date such asset is disposed of, over the value of that asset at that date:

Provided that a balancing allowance shall only be made in respect of such asset if immediately prior to its disposal it was in use by such owner in the trade or business for the purpose of which such qualifying expenditure was incurred.

10. Balancing charges

Subject to the provisions of this Schedule, where in its basis period for a year of assessment a company owning an asset, which has incurred in respect thereof qualifying expenditure wholly, exclusively, necessarily and reasonably for the purposes of a trade or business carried on by it, disposes of that asset, a charge (hereinafter called “a balancing charge”) shall be made on that

company for that year of the excess of the value of that asset, at the date of its disposal, over the residue of that expenditure at that date:

Provided that a balancing charge shall only be made in respect of such asset if immediately prior to its disposal it was in use by such owner in the trade or business for the purposes of which such qualifying expenditure was incurred and shall not exceed the total of any allowances made to such owner under the provisions of this Schedule in respect of such asset and in cases falling under paragraph 19 of the Fourth Schedule to the Personal Income Tax Act, of any deductions made under section 10 of that Act in respect of the capital cost of such asset.

[Fourth Schedule. Cap. P8.]

11. Residue

- (1) The residue of qualifying expenditure, in respect of any asset, at any date, shall be taken to be the total qualifying expenditure incurred on or before that date, by the owner thereof at that date, in respect of that asset, less the total of any initial or annual allowances made to such owner, in respect of that asset, before that date.
- (2) For the purpose of this paragraph, an initial allowance or annual allowance shall be deemed to be made at the end of the basis period for the year of assessment for which any such allowance is made.

12. Meaning of “disposed of”

Subject to any express provision to the contrary, for the purposes of this Schedule-

- (a) a building, structure or works of a permanent nature is disposed of if any of the following events occur-
 - (i) the relevant interest therein is sold; or
 - (ii) that interest, being an interest depending on the duration of a concession, comes to an end on the coming to an end of that concession; or
 - (iii) that interest, being a leasehold interest, comes to an end otherwise than on the person entitled thereto acquiring the interest which is reversionary thereon; or
 - (iv) the building, structure or works of a permanent nature are demolished or destroyed or, without being demolished or destroyed, cease altogether to be used for the purposes of a trade or business carried on by the owner thereof;
- (b) plant, machinery or fixtures are disposed of if they are sold, discarded or cease altogether to be used for the purposes of a trade or business carried on by the owner thereof;
- (c) assets in respect of which qualifying mining expenditure is incurred are disposed of if they are sold or if they cease to be used for the purposes of the trade or business of the company incurring the expenditure either on such company ceasing to carry on such trade or business

or on such company receiving insurance or compensation monies therefore.

13. Value of an asset

- (1) The value of an asset at the date of its disposal shall be the net proceeds of the sale thereof or of the relevant interest therein, or if it was disposed of without being sold, the amount which, in the opinion of the Service, such asset or the relevant interest therein, as the case may be, would have fetched if sold in the open market at that date, less the amount of any expenses which the owner might reasonably be expected to incur if the asset were so sold.
- (2) For the purposes of this paragraph, if an asset is disposed of in such circumstances that insurance or compensation monies are received by the owner thereof, the asset or the relevant interests therein, as the case may be, shall be treated as having been sold and as though the net proceeds of the insurance or compensation monies were the net proceeds of the sale thereof.
- (3) So much of sub-paragraph (1) of this paragraph as relates to the circumstances for determining the value of an asset by reference to the disposal of such asset, other than by way of sale, shall have effect-
 - (a) in relation to any asset or the relevant interest therein disposed of not being by way of bargain made at arm's length; or
 - (b) where the sale is between persons who are related to each other or between persons both of whom are controlled by some other person or one of whom has control over the other.

14. Apportionment

- (1) Any reference in this Schedule to the disposal, sale or purchase of any asset includes a reference to the disposal, sale or purchase of that asset, as the case may be, together with any other asset, whether or not qualifying expenditure has been incurred on such last-mentioned asset; and where an asset is disposed of, sold, or purchased together with another asset, so much of the value of the assets as, on a just apportionment, is properly attributable to the first mentioned asset shall, for the purposes of this Schedule, be deemed to be the value of or the price paid for that asset, as the case may be.

For the purposes of this sub-paragraph, all the assets which are purchased or disposed of in pursuance of one bargain shall be deemed to be purchased or disposed of together, notwithstanding that separate prices are or purport to be agreed for each of those assets or that there are or purport to be separate purchases or disposals of those assets.

- (2) The provisions of sub-paragraph (1) of this paragraph shall apply, with any necessary modifications, to the sale or purchase of the relevant interest in any asset together with any other asset or relevant interest in any other asset.

15. Part of an asset

Any reference in this Schedule to any asset shall be construed whenever necessary as including a reference to a part of any asset (including an undivided part of that asset in the case of joint interests

therein) and when so construed any necessary apportionment shall be made as may, in the opinion of the Service, be just and reasonable.

16. Extension of meaning of “in use”

- (1) For the purposes of this Schedule, an asset shall be deemed to be in use during a period of temporary disuse.
- (2) For the purposes of paragraphs 6, 7 and 8 of this Schedule-
 - (a) an asset in respect of which qualifying expenditure has been incurred by the company owning such asset for the purposes of a trade or business carried on by it shall be deemed to be in use, for the purposes of that trade or business, between the dates hereinafter mentioned, where the Service is of the opinion that the first use to which the asset will be put by the company incurring such expenditure will be for the purposes of that trade or business;
 - (b) the said dates shall be taken to be the date on which such expenditure was incurred and the date on which the asset is in fact first put to use:
- (3) Provided that where any allowances have been given in consequence of this subparagraph and the first use to which such asset is put is not for the purposes of such trade or business, all such additional assessments shall be made as may be necessary to counteract the benefit obtained from the giving of any such allowances.

17. Exclusion of certain expenditure

Where any company has incurred expenditure which is allowed to be deducted, in computing the profits of its trade or business under section 24 of this Act, such expenditure shall not be treated as qualifying expenditure.

18. Application of lessor

- (1) Where a company owning an asset-
 - (a) has incurred capital expenditure in respect thereof; or
 - (b) leases that asset to any person under an operating lease contract for use wholly, exclusively, necessarily and reasonably for the purpose of a trade or business carried on by such person,

the provisions of this Schedule shall apply, as though such expenditure were incurred for the purpose of a trade or business carried on by the owner or lessor and as though the owner or lessor were using the asset for the purpose of such last-mentioned trade or business in the way in which and for the period or periods during which the asset is in fact in the first- mentioned trade or business.

[1993 No. 3.]

- (2) Where however an asset is acquired by any hirer or lessee under a finance lease contract the terms of which provide for the transfer of ownership, risks and reward to the hirer or lessee, the provisions of this Schedule shall apply in the same way as it applies to an asset acquired by any owner or lessor of an asset for the purpose of his trade or business, but shall so apply subject to the following modifications that is to say-
- (a) the qualifying expenditure within the provisions of this Schedule shall in relation to any asset so acquired under that contract, be limited to the amount of the total lease payments due from hirer or lessee, during his basis period excluding in the computation of such qualifying expenditure any interest or charges payable under the contract;
 - (b) any reference in this subparagraph to any owner or lessor of any asset shall be construed as including a reference to a hirer or lessee under the finance lease contract and as excluding a reference to the person leasing the asset to the hirer or lessee under the contract.

[1993 No. 3.]

- (3) [Deleted by 2023 No. 1, s.9]

- (4) For the purposes of this Schedule the terms “**operating lease**” and “**finance lease**” shall have the meanings ascribed to them by the Statement of Accounting Standard on Leases.

[1993 No. 3.]

- (5) For the purposes of this paragraph in relation to the trade or business which an owner is to be treated as carrying on, his basis period for any year of assessment shall be taken to be the year immediately preceding that year of assessment.
- (6) When a company owning an equipment has incurred capital expenditure in respect thereof for the purposes of leasing that equipment for the use wholly, exclusively, necessarily and reasonably for the purposes of a trade or business carried on or about to be carried on by a person, the provisions of this Schedule shall apply to all such leases.

- (7) [Deleted by 2023 No. 1, s.9]

19. Asset used or expenditure incurred partly for the purposes of a trade or business

- (1) The following provisions of this paragraph shall apply where either or both of the following conditions apply with respect to any asset-
- (a) the owner of the asset has incurred in respect thereof qualifying expenditure partly for the purposes of a trade or business carried on by him and partly for other purposes;
 - (b) the asset in respect of which qualifying expenditure has been incurred by the owner thereof is used partly for the purposes of a trade or business carried on by such owner and partly for other purposes.
- (2) Any allowances and any charges which would be made if both such expenditure were incurred wholly, exclusively, necessarily and reasonably for the purposes of such trade or business and

such asset were used wholly and exclusively for the purposes of such trade or business shall be computed in accordance with the provisions of this Schedule.

- (3) So much of the allowances and charges computed in accordance with the provisions of subparagraph (2) of this paragraph shall be made as in the opinion of the Service is just and reasonable having regard to all the circumstances and to the provisions of this Schedule.

20. Disposal without change of ownership

- (1) Where an asset in respect of which qualifying expenditure has been incurred by the owner thereof has been disposed of in such circumstances that such owner remains the owner thereof, then, for the purposes of determining whether and, if so, in what amount, any annual or balancing allowance or balancing charge shall be made to or on such owner in respect of his use of the asset after the date of such disposal-
 - (a) qualifying expenditure incurred by such owner in respect of such asset prior to the date of such disposal shall be let out of account; but
 - (b) such owner shall be deemed to have bought such asset immediately after such disposal for a price equal to the residue of such qualifying expenditure at the date of such disposal, increased by the amount of any balancing charge or decreased by the amount of any balancing allowance made as a result of such disposal.

21. Meaning of “allowances made”

Any reference in this Schedule to an allowance made includes a reference to an allowance which would be made but for an insufficiency of assessable profits against which to make it.

22. Claims for allowances

No allowance shall be made to any company for any year of assessment under the provisions of this Schedule unless claimed by it for that year or where the Service is of the opinion that it would be reasonable and just so to do.

23. Election in double taxation cases

- (1) Where a company makes a claim to an initial or annual allowance under this Schedule in connection with any trade or business, if the taxes in respect of the profits of the trade or business are the subject of an arrangement, having effect by virtue of section 45 of this Act, between Nigeria and any other territory, for relief from double taxation, it may elect, at the time of making such claim or within such reasonable time thereafter as the Service may allow, that that allowance shall be calculated at a lesser rate than that provided for in paragraph 6 or 7 of this Schedule and in making such election it shall specify the amount of such lesser rate.
- (2) Where an election has been made under this paragraph, the amount of such lesser rate shall be taken to be the appropriate rate in relation to that allowance for all the purposes of this Schedule.

24. Manner of making allowances and charges

- (1) The amount of any charge to be made on a company under the provisions of this Schedule shall be made by making an addition to its assessable profits for the year of assessment for which such charge falls to be made under the provisions of this Schedule:

Provided that where any such charge falls to be made on any company for any year of assessment, whenever necessary by reason of the assessment on that company having become final and conclusive for that year or for other sufficient reason, the Service may make an additional assessment upon such company in respect of the amount of such charge.

- (2) Subject to the provisions of this paragraph, the amount of any allowance to be made to a company under the provisions of this Schedule shall be made by making a deduction from the remainder of its assessable profits for the year of assessment for which such allowance falls to be made under the provisions of this Schedule.
- (3) For the purposes of this paragraph, any such remainder for a year of assessment shall be ascertained by first giving full effect to the provisions of sub-paragraph (1) of this paragraph and to the provisions of section 31 relating to the deduction of the amount of any loss.
- (4) Where full effect cannot be given to any deduction to be made under subparagraph (2) of this paragraph for any year of assessment owing to there being no such remainder for that year, or owing to the remainder for that year being less than such deduction, the deduction or part of the deduction to which effect has not been given, as the case may be, shall, for the purpose of ascertaining total profits (of the company entitled to such deduction) under section 31 for the following year, be deemed to be a deduction for that year, in accordance with the provisions of sub-paragraph (2) of this paragraph, and so on for succeeding years.
- (5) Where a company is entitled to a deduction under the preceding sub-paragraph, or to a deduction in respect of a balancing allowance, in respect of an asset used in a trade or business carried on by it, for a year of assessment in which that trade or business permanently ceases to be carried on by it and full effect cannot be given to any such deduction for that year owing to there being no such remainder of assessable profits for that year, or owing to the remainder of its assessable profits for that year being less than such deduction, that deduction or the part to which effect has not been given, as the case may be, may, on a claim being made by such company, be given by way of deduction from any remainder of its assessable profits for the preceding year of assessment, and so on for other preceding years, so, however, that no such deduction shall be given by virtue of this sub-paragraph for any year earlier than the fifth year before the first-mentioned year of assessment:

Provided that where any relief is given under this sub-paragraph in respect of any such deduction, the provisions of the preceding sub-paragraph shall cease to have effect in respect of that deduction for any year of assessment subsequent to the year of assessment in which such trade or business ceases.

- (6) Where any deduction falls to be given under the provisions of the preceding subparagraph for any preceding years of assessment, whenever necessary, by reason of any assessments for those years having become final and conclusive, or for other sufficient reason, the Service, with respect to each such year, may make such repayment or set-off of the tax, or of any part

of such tax, paid or charged for any such year as may be appropriate, in lieu of making any such deduction.

- (7) In giving effect to the provisions of sub-paragraph (2) of this paragraph, the amount of capital allowances to be deducted from assessable profits in any year of assessment shall not exceed sixty six and two thirds of a per cent of such assessable profits of a company, but any company engaged in upstream and midstream gas operations as described in the Petroleum Industry Act, No. 6, 2021 or the Petroleum Profit Tax Act, Cap. P13, Laws of the Federation of Nigeria or the agro-allied industry or which is engaged in the trade or business of manufacturing shall not be affected by the restriction under this sub-paragraph:

Provided that the value of any asset on which capital allowance is to be claimed under this Second Schedule shall be reduced by the amount of any investment allowance claimable by such company.

[Deleted by 2023 No. 1, s.9]

- (8) In this paragraph-

“**company in the agro-allied industry**” is a company to which subsection (9) of section 11 of this Act applies.

TABLE I

Initial allowances

[1996 No. 32.]

Qualifying Expenditure in respect of:	Rate per cent
Building Expenditure	15
Industrial Building Expenditure	15
Mining Expenditure	95
Plant Expenditure (excluding Furniture and Fittings)	50
Manufacturing Industrial Plant Expenditure	50
Construction Plant Expenditure (excluding Furniture and Fittings)	50
Public Transportation Motor Vehicle	95
Ranching and Plantation Expenditure	30
Plantation Equipment Expenditure	95

Research and Development Expenditure	95
Motor Vehicle Expenditure	50
Agricultural Plant Expenditure	95
Housing Estate Expenditure	50
Furniture and Fitting Expenditure	25

TABLE II

Annual allowances

[1996 No.32.]

Qualifying Expenditure in respect of:	Rate per
cent Qualifying Agricultural Production	nil
Qualifying Building Expenditure.....	10
Qualifying Furniture and Fittings	20
Qualifying Industrial Building Expenditure	10
Qualifying Mining Expenditure	nil
Qualifying Plant Expenditure	25
Qualifying Plantation Equipment Expenditure	nil
Qualifying Ranching and Plantation Expenditure	50
Qualifying Housing Estate Expenditure	25
Qualifying Public Transportation (inter-City) new Mass Transit Coach Expenditure.	nil
Qualifying Motor Vehicles-Others	25
Qualifying Research and Development	nil

THIRD SCHEDULE

[2019 N0. 1, s. 23]

(1) Tax exemption on certain interests

TABLE I

Table of tax exemption on interest on foreign loan

<i>Repayment period including Moratorium</i>	<i>Grace period</i>	<i>Tax exemption allowed</i>
<i>Above 7 years</i>	<i>Not less than 2 years</i>	<i>70%</i>
<i>5-7 years</i>	<i>Not less than 18 months</i>	<i>40%</i>
<i>2-4 years</i>	<i>Not less than 12 months</i>	<i>10%</i>
<i>Below 2 years</i>	<i>Nil</i>	<i>Nil</i>

(2) For the purpose of this Schedule-

- (a) “moratorium” means a period at the beginning of a loan term during which the borrower is not expected to make any principal or interest repayments, provided that where any principal or interest repayments are made during the period, the tax exemptions provided under this Schedule shall be adjusted by the Service in a proportionate manner; and
- (b) “repayment period” means the agreed tenor of the loan facility, provided that where the loan is repaid before expiration of this period, the tax exemptions provided under this Schedule shall be adjusted by the Service in a proportionate manner.

[2019 N0. 1, s. 23]

FOURTH SCHEDULE

[Section 86]

Warrant and authority to levy by distress under the Companies Income Tax Act

To (a)
 Name of Company (b).....
 Amount of tax to be levied by distress (c).....

The Federal Inland Revenue Service, in exercise of powers vested in it by section 86 of the Companies Income Tax Act (Cap. C21) hereby authorises you to collect and recover the sum of (c)..... being arrears of tax due for the years of assessment hereinafter mentioned from the above named company whose place of business is at (d); and for the recovery thereof the said Service further authorises that you, with the aid (if necessary) of your assistants and calling to your assistance any police officer (if necessary) which assistance he is by law required to give, do forthwith levy by distress the said sum together with the costs and charges of and incidental to the taking and keeping of such distress, on the goods, chattels, land, premises or other distrainable things of the said company wherever the same may be found and on all goods which you may find in any premises or on any lands in the use or possession of the said company or of any other person on its behalf or in trust for the company.

And for the purpose of levying such distress you are hereby authorised if necessary, with such assistance as aforesaid, to break open any building or place in the daytime.

2. The particulars of the said arrears of tax are as follows:

<i>Year of Assessment</i>	<i>No. of Notice of Assessment</i>	<i>Amount of tax due ₦ : K</i>	} (e)
(i)	
(ii)	
(iii)	

Signed for and on behalf of the Federal Inland Revenue Service at..... this
 day of 20

Signature (f)

Chairman
Federal Inland Revenue Service

NOTES

- (a) *Insert the name of the officer who is authorised by the Service to execute the warrant of distress.*
- (b) *Insert the name of the company on whose goods, chattels, land, premises or other distrainable things the warrant of distress is to be executed.*
- (c) *Insert the amount of tax outstanding against the company and which amount is to be levied by distress.*
- (d) *Insert the address of the place of business of the company.*
- (e) *Insert the particulars of the arrears of tax to be levied by distress, stating the years of assessment, the numbers of notices of assessment and the amount of tax due in respect of each such year of assessment.*
- (f) *To be signed by the Chairman, Federal Inland Revenue Service.*

FIFTH SCHEDULE

[Section 25 (5)]

Funds, bodies and institutions in Nigeria to which donations may be made under section 25 of this Act

1. The Boys Brigade of Nigeria.
2. The Boys Scouts of Nigeria.
3. The Christian Council of Nigeria.
4. The Cocoa Research Institute of Nigeria
5. Any educational institution affiliated under any law with any university in Nigeria, or established under any law in Nigeria and any other educational institution recognised by any Government in Nigeria.
6. The Girl Guides of Nigeria.
7. Any hospital owned by the Government of the Federation or of a State or any University Teaching Hospital or any hospital which is carried on by a society or association otherwise than for the purpose of profits or gains to the individual members of that society or association.

8. The Institute of Medical Laboratory Technology.
9. The National Commission for Rehabilitation.
10. The National Library.
11. The Nigerian Council for Medical Research.
12. The National Science and Technology Development Agency.
13. The Nigerian Institute for International Affairs.
14. The Nigerian Institute for Oil Palm Research.
15. The Nigerian Institute for Trypanosomiasis Research.
16. The Nigerian Museum.
17. The Nigerian Red Cross.
18. A public fund established and maintained for providing money for the construction or maintenance of a public memorial relating to the civil war in Nigeria which ended on 15 January, 1970.
19. A public institution or public fund (including the Armed Forces Comfort Fund) established or maintained for the comfort, recreation or welfare of members of the Nigerian Army, Navy or Air Force.
20. A public fund established and maintained exclusively for providing money for the acquisition, construction, maintenance or equipment of a building used or to be used as a school or college by the Government of the Federation or a State or by a public authority or by a society or association which is carried on otherwise than for the purpose of profit or gain to [lie individual members of that society or association.
21. The National Youth Council of Nigeria.
22. National Sports Commission and its State Associations.
23. The Nigerian Society for the Deaf and Dumb.
24. The Society for the Blind.
25. The Nigerian National Advisory Council for the Blind.
26. Associations or Societies for the Blind in Nigeria.
27. Training Centres and Residential Schools for the Blind in Nigeria.

28. The National Braille Library of Nigeria.
29. The Nigerian Youth Trust.
30. Van Leer Nigerian Educational Trust.
31. Southern Africa Relief Fund.
32. Islamic Education Trust.
33. The Institute of Chartered Accountants of Nigeria Building Fund.
34. Murli T. Chellaram Foundation
35. Any public fund established or approved by the Government of the Federation or established by any of the State Governments in aid of or for the relief of drought or any other national disaster in any part of the Federation.
36. A public institution established and maintained by a society or association for the promotion or defence of human rights, women empowerment and development or for reorientation/rehabilitation/welfare support service for orphans, widows, physically challenged, refugees and all categories of persons that may require social or economic rehabilitation and transformation or for youth empowerment and development which is carried on other than for the purpose of profits or gains to the individual members of the society or association or person.
[2011 No. 1]
37. A public institution established and maintained by a society or association for Leadership and Resource Development or for the Promotion of National Unity and Patriotism or for the Promotion of Social and Economic Development which is carried on other than for the purpose of profits or gains to the individual members of the institution, society, association or person.
[2011 No. 1]
38. A public institution or public fund established and maintained by a society or association for accident prevention and control activities or for information system development and awareness which is carried on other than for the purpose of profits or gains to the individual members of the institution, society, association or person.
[2011 No. 1]
39. A public institution established and maintained by a society or association for creation of awareness for transparency in governance and electoral processes or for the promotion of national unity and patriotism which is carried on other than for the purpose of profits or gains to the individual members of the society, association or person.
[2011 No. 1]
40. Any public institution or public fund established and maintained by a society or association for museum development and promotion of sports, arts and culture which is carried on otherwise than for the purpose of profits or gains to the individual members of the society,

association or person.

[2011 No. 1]

41. Any public institution or public fund established and maintained by a society or association for rendering assistance in the provision of safe water, electricity, infrastructure and agricultural development which is carried on other than for the purpose of profits or gains to the individual members of the society, association or person; and

[2011 No. 1]

42. Any professional body established under an Act of the National Assembly for the regulation and practice of the profession.

[2011 No. 1]

SIXTH SCHEDULE

[Section 64 (2). 1991 No. 21.]

Warrant and authority to enter premises, offices, etc., under the Companies Income Tax Act 1979

To (a)
Name of Company (b)
Incorporation or Identification No. (c)
Place of Business (d)

The Federal Inland Revenue Service, in exercise of powers vested in it by section 64 of the Companies Income Tax Act (Cap. C21) hereby authorises you to enter the premises, office, place of management or residence of the principal officer, office of the agent, factor or representative of the company which company has been suspected by the Service of fraud, wilful default, etc., in connection with the tax imposed under the aforesaid Act; and whose premises, office, place of management or residence of the principal officer, office of the agent, factor or representative is at (d)..... ; and for the

carrying out of your assignment, the said Service further authorises that you, with the aid (if necessary) of your assistants and calling to your assistance a police officer, which assistance the police officer is by law required to give, search and remove (if necessary) such records, books and documents of the company wherever they may be found either in possession of any officer of the company or any other person on its behalf.

For the purpose of your entry into the aforementioned premises, you are hereby authorised if necessary, with such assistance as aforesaid, to break open any building in the daytime.

Signed for and on behalf of the Federal Inland Revenue Service at
this..... day of 20

Signature (e)

Chairman,
Federal Inland Revenue Services

NOTE

- (a) *Insert the name of the officer who is authorised by the Service to execute the warrant of entry.*
- (b) *Insert the name of the company in whose premises the warrant of entry is to be executed.*
- (c) *Insert the identification number of the company in whose premises the warrant of entry is to be executed.*
- (d) *Insert the place of business of the company.*
- (e) *To be signed by the Chairman, Federal Inland Revenue Service.*
[1991 No. 21.]

SEVENTH SCHEDULE

[2019 No.1, s. 23.]

1. Notwithstanding any provisions of this Act, where a Nigerian company, or a fixed base of a foreign company in Nigeria, incurs any expenditure by way of interest or of similar nature in respect of debt issued by a foreign connected person, the excess interest thereon shall be a disallowable deduction for the purpose of this Act.
2. For the purposes of paragraph 1, the excess interest shall mean an amount of total interest paid or payable in excess of thirty per cent of earnings before interest, taxes, depreciation and amortization of the Nigerian company in that accounting period.
3. Nothing contained in paragraph 1 shall apply to a Nigerian subsidiary of a foreign company which is engaged in the business of banking or insurance.
4. Where for any assessment year, the interest expenditure is not wholly deducted against income, so much of the interest expenditure as has not been deducted, shall be carried forward to the following assessment year or assessment years, and it shall be allowed as a deduction against the profits, if any, of any business carried on by it and assessable for that assessment year to the extent permitted in accordance with paragraph 2:

Provided that no interest expenditure shall be carried forward under this paragraph for more than five assessment years immediately succeeding the assessment year for which the excess interest expenditure was first computed.

5. Any person who violates the provisions of this Schedule shall be liable to a penalty at ten per cent and interest at the Central Bank of Nigeria monetary policy rate plus a spread to be determined by the Minister on any adjustments made by the Service relating to excess interest charged in any year.
6. For the purposes of this section, the expressions-
 - (a) **"connected persons"** means-

- (i) any person controlled by or under common control, ownership or management;
 - (ii) any person who is not connected but receives an implicit or explicit guarantee or deposit for the provision of corresponding or matching debt; or
 - (iii) any related party as described under the Nigerian Transfer Pricing Regulations 2018.
- (b) **"debt"** means any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts or other finance charges that are deductible in the computation of income chargeable under the head "Profits and gains of business or profession".

CHAPTER D3

DEEP OFFSHORE AND INLAND BASIN PRODUCTION SHARING CONTRACTS ACT ARRANGEMENT OF SECTIONS

SECTION

1. Production sharing contracts.
2. Duration of oil prospecting licence.
3. Determination of petroleum profits tax.
4. Determination of investment tax credit and investment tax allowance.
5. Royalty payable in respect of deep offshore production sharing contracts.
6. Computation of petroleum profit tax.
7. Allocation of royalty oil.
8. Allocation of cost oil.
9. Allocation of tax oil.
10. Allocation of profit oil.
11. Payment of royalty.
12. Chargeable tax on petroleum operations.
13. Use of realisable price in determining royalty and petroleum profit tax in respect of crude oil, etc.
14. Submission of receipts.
15. Adaptation of laws.
16. Periodic review.
17. Interpretation.
18. Short title.

CHAPTER D3

DEEP OFFSHORE AND INLAND BASIN PRODUCTION SHARING CONTRACTS ACT

An Act to, among other things, give effect to certain fiscal incentives given to the oil and gas companies operating in the Deep Offshore and Inland Basin areas under production sharing contracts between the Nigerian National Petroleum Corporation or other companies holding oil prospecting licenses or oil mining leases and various petroleum exploration and production companies.

[1999 No. 9]

[Commencement]

[1st January, 1993]

1. Production sharing contracts

Notwithstanding anything to the contrary contained in any other enactment or law, the provisions of this Act shall apply to all production sharing contracts as defined in section 17 of this Act.

2. Duration of oil prospecting licences

The duration of an oil prospecting licence relating to production sharing contracts in the Deep Offshore and Inland Basin shall be determined by the Minister and shall be for a minimum period of five years and an aggregate period of ten years.

3. Determination of petroleum profit tax

(1) The petroleum profits tax payable under a production sharing contract shall be determined in accordance with the Petroleum Profits Tax Act: Provided that the petroleum profits tax applicable to the contract area as defined in the production sharing contracts shall be 50 per cent flat rate of chargeable profits for the duration of the production sharing contracts.

[Cap. P13.]

(2) Nothing contained in this Act shall be construed as having exempted the contractors from the payment of any other taxes, duties or levies imposed by any Federal, State or Local Government, or Area Council Authority.

4. Determination of investment tax credit and investment tax allowance

(1) Where the Nigerian National Petroleum Corporation (in this Act referred to as “the Corporation”) or the holder and the contractor have incurred any qualifying capital expenditure wholly, exclusively and necessarily for the purposes of petroleum operations carried out under the terms of a production sharing contract in the Deep Offshore or Inland Basin, there shall be due to the parties in respect of the production sharing contracts executed prior to 1 July 1998, a credit (in this Act referred to as “investment tax credit”) at a flat rate of 50 per cent of the qualifying expenditure in accordance with the production sharing contract terms for the accounting period in which that asset was first used for the

purposes of such operations.

- (2) In respect of parties who executed production sharing contracts after 1 July 1998, there shall be due to such parties an allowance (in this Act referred to as an “investment tax allowance”) at a flat rate of 50 per cent of the qualifying expenditure in accordance with the provisions of existing applicable legislation for the accounting period in which that asset was first used for the purposes of such operations.

5. Royalty payable in respect of deep offshore production sharing contracts

- (1) The payment of royalty in respect of the Deep Offshore production sharing contracts shall be graduated as follows, that is-

Area

Rate

- (a) In areas from 201 to 500 metres water depth..... 12 per cent
 - (b) From 501 to 800 metres water depth8 per cent
 - (c) From 801 to 1000 metres water depth4 per cent
 - (d) In areas in excess of 1000 metres depth.....0 per cent
- (2) The royalty rate payable under the production sharing contracts in the Inland Basin shall be 10 per cent.

6. Computation of petroleum profit tax

Computation and payment of estimated and final petroleum profit tax shall be made in US dollars on the basis of the US dollar returns filed.

7. Allocation of royalty oil

Royalty oil shall be allocated to the Corporation or the holder, as the case may be, in such quantum as shall generate an amount of proceeds equal to actual royalty payable during each month and the concession rental payable annually in accordance with the production sharing contracts terms.

8. Allocation of cost oil

- (1) Cost oil shall be allocated to the contractor in such quantum as shall generate an amount of proceeds sufficient for the recovery of operating costs in oil prospecting licences as defined in the production sharing contracts and any oil mining leases derived therefrom.
- (2) All operating costs shall be recovered in U.S. dollars through cost oil allocations in accordance with the terms of the production sharing contract.

9. Allocation of tax oil

Tax oil shall be allocated to the Corporation or the holder, as the case may be, in such quantum as shall generate an amount of proceeds equal to the actual petroleum profit tax liability payable during each month.

10. Allocation of profit oil

Profit oil, being the balance of available crude oil after deducting royalty oil, tax oil and cost oil, shall be allocated to each party in accordance with the terms of the production sharing contract.

11. Payment of royalty

- (1) The Corporation or the holder, as the case may be, shall pay all royalty, concession rentals and petroleum profit tax on behalf of itself and the contractor out of the allocated royalty oil and tax oil.
- (2) Separate tax receipts in the names of the Corporation or the Holder and the contractor for the respective amounts of petroleum profit tax paid on behalf of the Corporation or the holder and contractor shall be issued by the Federal Inland Revenue Service (in this Act referred to as “the Service”) in accordance with the terms of the Production Sharing Contract.

12. Chargeable tax on petroleum operations

The chargeable tax on petroleum operations in the contract area under the production sharing contracts shall be split between the Corporation or the holder and the contractor in the same ratio as the split of profit oil as defined in the production sharing contract between them.

13. Use of realisable price in determining royalty and petroleum profit tax in respect of crude oil, etc.

- (1) The realisable price as defined in the production sharing contract established by the Corporation or the holder in accordance with the provisions of the production sharing contract, shall be used to determine the amount payable on royalty and petroleum profit tax in respect of crude oil produced and lifted pursuant to the production sharing contract.
- (2) The parameters for new crude oil streams produced from the contract area shall also be determined in accordance with the provisions of the production sharing contract.

14. Submission of receipts

The Corporation or the holder, as the case may be, shall make available to the contractor copies of the receipts issued by the Service bearing the names of each party as defined in the production sharing contract in accordance with each party's tax oil allocation for the payment of petroleum profit tax under the provisions of the production sharing contract.

15. Adaptation of laws

- (1) The relevant provisions of all existing enactments or laws, including but not limited to the Petroleum Act, and the Petroleum Profit Tax Act, shall be read with such modifications as to bring them into conformity with the provisions of this Act.

[Cap. 10. Cap. P13.]

- (2) If the provisions of any other enactment or law including but not limited to the enactments specified in subsection (1) of this section, are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provisions of that other enactment or law shall, to the extent of that inconsistency, be void.

16. Periodic review

- (1) The provisions of this Act shall be subject to review to ensure that if the price of crude oil at any time exceeds \$20 per barrel, real terms, the share of the government of the Federation in the additional revenue shall be adjusted under the production sharing contracts to such extent that the production sharing contracts shall be economically beneficial to the government of the Federation.

[1999 No. 26.]

- (2) Notwithstanding the provisions of subsection (1) of this section, the provisions of this Act shall be liable to review after a period of fifteen years from the date of commencement and every five years thereafter.

[1999 No. 26.]

17. Interpretation

In this Act, unless the context otherwise requires

“**Corporation**” means the Nigerian National Petroleum Corporation;

“**contractor**” means any petroleum exploration and production company which has entered into a production sharing contract agreement with the Corporation or entered into an agreement or arrangement with any Nigerian holder of an oil prospecting licence or an oil mining lease within the Deep Offshore and Inland Basin;

“**Deep Offshore**” means any water depth beyond 200 metres;

“**holder**” means any Nigerian company who holds an oil prospecting license or oil mining lease situated within the Deep Offshore and Inland Basin under the relevant provision of the Petroleum Act;

“**Inland Basin**” means any of the following Basins. namely, Anambra, Benin, Benue, Chad, Gongola, Sokoto and such other basins as may be determined, from time to time, by the Minister;

“**Minister**” means the Minister charged with responsibility for matters relating to petroleum and “**Ministry**” shall be construed accordingly;

“**parties**” includes the Corporation or any Nigerian company as the holder and the Contractor;

“**production sharing contracts**” means any agreement or arrangements made between the Corporation or the holder and any other petroleum exploration and production company or companies for the purpose of exploration and production of oil in the Deep Offshore and Inland

Basins;

“**Service**” means the Federal Inland Revenue Service.

18.Short Title

This Act may be cited as the Deep Offshore and Inland Basin Production Sharing Contracts Act

CHAPTER F36

FEDERAL INLAND REVENUE SERVICE (ESTABLISHMENT) ACT, 2007

ARRANGEMENT OF SECTIONS

SECTION:

PART I- ESTABLISHMENT OF THE FEDERAL INLAND REVENUE SERVICE AND ITS MANAGEMENT BOARD, ETC.

1. Establishment of the Federal Inland Revenue Service.
2. Objects of the Service.
3. Establishment and composition of the Management Board.
4. Tenure of office.
5. Cessation of membership.
6. Emoluments, etc. of members.

PART II-POWERS AND FUNCTIONS OF THE BOARD AND THE SERVICE

7. Powers of the Board.
8. Functions of the Service.
9. Establishment of Technical Committee of the Board.
10. Functions of the Technical Committee.

PART III- MANAGEMENT AND STAFF OF THE SERVICE

11. Executive Chairman of the Service.
12. Appointment of Secretary to the Board and other staff of the Service.
13. Pensions.
14. Staff regulations.

PART IV-FINANCIAL PROVISIONS

15. Funds of the Service.
16. Expenditure of the Service.
17. Estimates.
18. Accounts and audit.
19. Annual report, etc.
20. Power to accept gifts.
21. Power to borrow.
22. Accountability.
23. Refund to taxpayers.
24. Power of Accountant-General to deduct from source.

PART V TAX ADMINISTRATION AND ENFORCEMENT

25. Administration of tax laws.
26. Call for returns, books, documents and information.
27. Call for further returns and payment of tax due.
28. Information to be delivered by bankers.
- 28A. Information to be delivered by bankers and others.
29. Power to access lands, buildings, books and documents.
30. Power to remove books and documents.
31. Power of substitution.
32. Addition for non-payment of tax and enforcement of payment
33. Power to distrain.
34. Recovery of tax.
35. Tax investigations.

36. Enforcement of powers.
37. Power to pay reward.
38. Immunity from action, etc.
39. Information and documents to be confidential.

PART VI- OFFENCES AND PENALTIES

40. Failure to deduct or remit tax.
41. Obstruction, etc.
42. False declaration.
43. Counterfeiting documents, etc.
44. Penalties for offences by authorized and unauthorized person
45. Penalty where offenders are armed.
46. Unlawful assumption of character of an authorized officer.
47. Prosecution.
48. Power to compound offences.
49. General penalty.

PART VII-GENERAL PROVISIONS

50. Official secrecy and confidentiality.
51. Board to be subject to general direction of the Minister.
52. Delegation of powers of the Board.
53. Signification.
54. Imposition of surcharge.
55. Limitation of suits against the Service, etc.
56. Service of documents.
57. Restriction on execution against property of the Service.

58. Indemnity.

PART VIII-MISCELLANEOUS PROVISIONS

59. Establishment of Tax Appeal Tribunal.

60. Directives by the Minister, etc.

61. Power to make regulations.

62. Repeal of Part I of Cap. 60 LFN, 1990.

63. Savings and transitional provisions relating to staff or employees

64. Other savings and transitional provisions.

65. Continuation of Board members.

66. Continuation and completion of disciplinary proceedings.

67. Rights and obligations transferred.

68. Relevance of other laws.

69. Interpretation.

70. Short Title.

SCHEDULES

FIRST SCHEDULE- Legislation administered by the Service.

SECOND SCHEDULE- Supplementary provisions relating to the Board.

THIRD SCHEDULE- Form of authorization to access lands, buildings, books and documents.

FOURTH SCHEDULE- Form of Warrant of Dstraint.

FIFTH SCHEDULE- Establishment, jurisdiction, authority and procedure of the Tax Appeal Tribunal.

CHAPTER F36

FEDERAL INLAND REVENUE SERVICE (ESTABLISHMENT) ACT 2007

2007 ACT No. 13

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE FEDERAL INLAND REVENUE SERVICE CHARGED WITH POWERS OF ASSESSMENT, COLLECTION OF, AND ACCOUNTING FOR REVENUES ACCRUABLE TO THE GOVERNMENT OF THE FEDERATION; AND FOR RELATED MATTERS

[16th Day of April, 2007]

[Commencement]

ENACTED by the National Assembly of the Federal Republic of Nigeria-

PART I: ESTABLISHMENT OF THE FEDERAL INLAND REVENUE SERVICE AND ITS MANAGEMENT BOARD, ETC.

1. Establishment of Federal Inland Revenue Service

- (1) There is established a body to be known as the Federal Inland Revenue Service (in this Act referred to as "*the Service*").
- (2) The Service-
 - (e) shall be a body corporate with perpetual succession and a common seal;
 - (f) may sue or be sued in its corporate name; and
 - (g) may acquire, hold or dispose of any property, movable or immovable for the purpose of carrying out any of its functions under this Act.
- (3) The Service shall have such powers and duties as are conferred on this Act or by any other enactment or law on such matters on which the National Assembly has power to make law.

2. Objects of the Service

The object of the Service shall be to control and administer the different taxes and laws specified in the First Schedule or other laws made or to be made from time to time, by the National Assembly or other regulations made thereunder by the Government of the Federation and to account for all taxes collected.

3. Establishment and composition of the Management Board.

- (1) There is established for the Service a board to be known as the Federal Inland Revenue Service Board (in this Act referred to as "the Board") which shall have overall supervision of the Service as specified under this Act.
- (2) The Board shall consist of-

- (a) the Executive Chairman of the Service who shall be experienced in taxation as Chairman of the Service to be appointed by the President and subject to confirmation of the Senate;
 - (b) six members with relevant qualifications and expertise who shall be appointed by the President to represent each of the six geo-political zones.
 - (c) a representative of the Attorney-General of the Federation;
 - (d) the Governor of the Central Bank of Nigeria or his representative;
 - (e) a representative of the Minister of Finance not below the rank of a Director;
 - (f) the Chairman of the Revenue Mobilization, Allocation and Fiscal Commission or his representative who shall be any of the Commissioners representing the 36 States of the Federation;
 - (g) the Group Managing Director of the Nigerian National Petroleum Corporation or his representative who shall not be below the rank of a Group Executive Director of the Corporation or its equivalent;
 - (h) the Comptroller-General of the Nigeria Custom Service or his representative not below the rank of Deputy Comptroller-General;
 - (i) the Registrar-General of the Corporate Affairs Commission or his representative not below the rank of a Director; and
 - (j) the Chief Executive Officer of the National Planning Commission or his representative not below the rank of a Director.
- (3) The members of the Board, other than the Executive Chairman, shall be part-time members.
- (4) The supplementary provisions set out in the Second Schedule to this Act shall have effect with respect to the proceedings of the Board and other matters mentioned therein.

4. Tenure of Office

The Chairman and other members of the Board, other than ex-officio members, shall each hold office-

- (a) for a term of four years' renewable once only;
- (b) on such terms and conditions as may be specified in the letter of appointment.

5. Cessation of membership

Notwithstanding the provisions of section 4 of this Act, a member of the Board shall cease to hold office as a member of the Board if-

- (a) he resigns his appointment as a member of the Board by notice, under his hand, addressed

to the President;

- (b) he becomes of unsound mind;
- (c) he becomes bankrupt or makes a compromise with his creditors;
- (d) he is convicted of a felony or any offence involving dishonesty or corruption;
- (e) he becomes incapable of carrying on the functions of his office either arising from an infirmity of mind or body;
- (f) the President is satisfied that it is not in the interest of the Service or in the interest of the public for the person to continue in office and the President removes him from office;
- (g) he has been found guilty of contravening the Code of Conduct Bureau and Tribunal Act; or gross misconduct in relation to his duties;
[Cap. C15 LFN 2004.]
- (h) in the case of a person possessing a professional qualification, he is disqualified by a competent authority; or
- (i) in the case of a person who becomes a member by virtue of the office he occupies, he ceases to hold such office.

6. Emoluments, etc. Of members

The Chairman and members of the Board shall be paid such emoluments, allowances and benefits as may be approved by the National Salaries, Incomes and Wages Commission.

PART II: POWERS AND FUNCTIONS OF THE BOARD AND THE SERVICE

7. Powers of the Board

- (1) The Board shall-
 - (a) provide the general policy guidelines relating to the functions of the Service;
 - (b) manage and superintend the policies of the Service on matters relating to the administration of the revenue assessment, collection and accounting system under this Act or any enactment or law;
 - (c) review and approve the strategic plans of the Service;
 - (d) employ and determine the terms and conditions of service including disciplinary measures of the employees of the Service;
 - (e) stipulate remuneration, allowances, benefits and pensions of staff and employees in consultation with the National Salaries, Incomes and Wages Commission; and

- (f) do such other things which in its opinion are necessary to ensure efficient performance of the functions of the Service under this Act.

8. Functions of the Service

(1) The service shall-

- (a) assess persons including companies, enterprises chargeable with tax
- (b) assess, collect, account and enforce payment of taxes as may be due to the Government or any of its agencies;
- (c) collect, recover and pay to the designated account any tax under provision of this Act or any other enactment or law;
- (d) in collaboration with the relevant ministries and agencies, review regimes and promote the application of tax revenues to stimulate economic and development;
- (e) in collaboration with the relevant law enforcement agencies, carry examination and investigation with a view to enforcing compliance with provisions of this Act;
- (f) make, from time to time, a determination of the extent of financial such other losses by government arising from tax fraud or evasion and s losses (or revenue forgone) arising from tax waivers and other related matters;
- (g) adopt measures to identify, trace, freeze, confiscate or seize proceeds derived from tax fraud or evasion;
- (h) adopt measures which include compliance and regulatory actions, introduction and maintenance of investigative and control techniques on detection and prevention of non-compliance;
- (i) collaborate and facilitate rapid exchange of information with relevant national or international agencies or bodies on tax matters;
- (j) undertake exchange of personnel or other experts with complementary agencies for purposes of comparative experience and capacity building;
- (k) establish and maintain a system for monitoring international dynamics of taxation in order to identify suspicious transactions and the perpetrators and other persons involved;
- (l) provide and maintain access to up to date and adequate data and information on all taxable persons, individuals, corporate bodies or all agencies of government involved in the collection of revenue for the purpose of efficient, effective and correct tax administration and to prevent tax evasion or fraud;
- (m) maintain database, statistics, records and reports on persons, organizations, proceeds, properties, documents or other items or assets relating to tax administration including matters relating to waivers, fraud or evasion;

- (n) undertake and support research on similar measures with a view to stimulating economic development and determine the manifestation, extent, magnitude and effects of tax fraud, evasion and other matters that affect effective tax administration and make recommendations to the government on appropriate intervention and preventive measures;
- (o) collate and continually review all policies of the Federal Government relating to taxation and revenue generation and undertake a systematic and progressive implementation of such policies;
- (p) liaise with the office of the Attorney-General of the Federation, all government security and law enforcement agencies and such other financial supervisory institutions in the enforcement and eradication of tax related offences;
- (q) issue taxpayer identification number to every taxable person in Nigeria in collaboration with States Boards of Internal Revenue and Local Government Councils;
- (r) carry out and sustain rigorous public awareness and enlightenment campaign on the benefits of tax compliance within and outside Nigeria;
- (s) carry out oversight functions over all taxes and levies accruable to the Government of the federation and as it may be required, query, subpoena, sanction and reward any activities pertaining to the assessment, collection of and accounting for revenues accruable to the Federation;
- (t) provide assistance in the collection of revenue claims or any other administrative assistance in tax matters with respect to any agreement or arrangement made between the Government of the Federal Republic of Nigeria and the Government of any country or other persons or bodies as may be deemed necessary in that regard; and
[2020 No. 1, s. 49]
- (u) carry out such other activities as are necessary or expedient for the full discharge of all or any of the functions under this Act.

(2) The Service may, from time to time, specify the form of returns, claims statements and notices necessary for the due administration of the powers conferred on it by this Act.

9. Establishment of Technical Committee of the Board

(1) There shall be a Technical Committee of the Board (in this Act referred to as “the Technical Committee”) which shall consist of-

- (a) the Executive Chairman of the Service as Chairman;
- (b) all the Directors and heads of departments of the Service;
- (c) the Legal Adviser of the Service; and
- (d) the Secretary to the Board.

(2) The Technical Committee may co-opt from the Service such staff as it may deem necessary

for the effective performance of its functions under this Act.

10. Functions of Technical Committee

The Technical Committee shall-

- (a) consider all tax matters that require professional and technical expertise and make recommendations to the Board;
- (b) advise the Board on any aspect of the functions and powers of the Service under this Act; and
- (c) attend to such other matters as may from time to time be referred to it by the Board.

PART III: MANAGEMENT AND STAFF OF THE SERVICE

11. Executive chairman of the Service

The Executive Chairman shall-

- (a) be appointed by the President subject to the confirmation of the Senate;
- (b) be the chief executive and accounting officer of the Service;
- (c) be responsible for the execution of the policy and the day-to-day administration of the affairs of the Service; and
- (d) have cognate experience and skills in accountancy, economics, taxation, law and related fields.

12. Appointment of Secretary to the Board and other staff of the Service

(1) There shall be a Secretary for the Board who shall-

- (a) be appointed by the Board from within the Service;
- (b) issue notices of meetings of the Board;
- (c) keep records of the proceedings of the Board; and
- (d) carry out such duties as the Executive Chairman or the Board may, from to time, direct.

(2) Subject to the provision of this section, the board may appoint such other persons to be employees of the Service and on such terms and conditions as may be prescribed by the Board.

(3) If the Board thinks it expedient that any vacancy in the Service should be filled by a person holding office in the Civil Service of the Federation or of a State it shall notify the appropriate Civil Service to that effect and thereafter the Board may by arrangement with the Civil Service Commission concerned, cause such vacancy to be filled by way of secondment or transfer.

- (4) The Service may appoint and employ such consultants, including Tax consultants or accountants and agents to transact any business or to do any act required to be transacted or done in the execution of its functions under this Act:

Provided that such consultants shall not carry out duties of assessing and collecting tax or routine responsibilities of tax officials.

13. Pensions

Employment in the Service shall be subject to the provisions of the Pension Reform Act and officers and employees of the Service shall be entitled to pension and other retirement benefits as prescribed under the Pension Reform Act.

[Cap. P4 LFN 2004]

14. Staff regulations

- (1) Subject to the provisions of this Act, the Board may make regulations relating generally to the conditions of service of the staff and, in particular, such conditions may provide for-
- (a) the appointment, promotion, termination, dismissal and discipline of staff or employees of the Service; and
 - (b) appeals by staff or employees against dismissal or other disciplinary measures, and until such regulations are made, any instrument relating to conditions of service in the public service of the Federation shall be applicable, with such modifications as may be necessary, to the employees of the Service.
- (2) The staff regulations made under subsection (1) of this section shall be published by the Board and issued to its staff in such manner as the Service may from time to time determine pending the publication in the Federal *Gazette*.

PART IV: FINANCIAL PROVISIONS

15. Funds of the Service

The Service shall establish and maintain a fund which shall consist of and to which shall be credited-

- (a) a percentage as determined by the National Assembly of all non-oil and gas revenue collected by the Service which may be appropriated by the National Assembly for the capital and recurrent expenditures of the Service;
- (b) all sums of money accruing to the Service by way of grants-in-aid and gifts, testamentary dispositions, endowments and contributions from any source;
- (c) such monies as may from time to time be granted to the Service by the Federal, State or Local Governments or other donor agencies provided such grants are not intended for purposes contrary to the objects and functions of the Service; and
- (d) all other monies which may, from time to time, accrue to the Service for other services including the disposal, lease or hire of, or any other dealing with, any property vested in or

acquired by the Service.

16. Expenditure of the Service

The Service shall defray from the Fund established pursuant to section 15 of this Act all the amounts payable under or in pursuance of this Act being sums representing-

- (a) emoluments and allowances payable to the Executive Chairman and other members of the Board;
- (b) reimbursements to members of the Board or any committee set up by the Board for such expenses as may be expressly authorized by the Service;
- (c) remunerations and other costs of employment of the staff of the Service;
- (d) amounts payable as pensions and other retirement benefits under or pursuant to this Act or any other enactment;
- (e) costs of acquisition and upkeep of premises belonging to the Service and any other capital expenditure of the Service;
- (f) investments, maintenance of utilities, staff promotion, training, research and similar activities;
- (g) costs necessary for the day-to-day operations of the Service;
- (h) all sums of money accruing to the Service by way of grants-in-aids, gifts, testamentary dispositions, endowments and contributions from any other source; and
- (i) any other payment for anything incidental to the foregoing provisions or in connection with or incidental to any other function of the Service under or pursuant to this Act.

17. Estimates

The Service shall cause to be prepared, not later than the 30th day of September in each year, an estimate of its income and expenditure for the succeeding year for the purpose of appropriation by the National Assembly.

18. Accounts and Audit

The Service shall keep proper accounts and records, and such account shall not later than six months after the end of each year, be audited by auditors appointed by the Board from the list and in accordance with the guidelines supplied by the Auditor General for the federation.

19. Annual report, etc

- (1) The Service shall not later than 30th September in each year, submit to the Minister, a report of its activities during the immediately preceding year and shall include in such report the audited accounts of the Service.
- (2) The Minister shall within 30 days of receipt of the report-

- (a) present a copy of the report to the Federal Executive Council; and
- (b) present a copy of the report to the National Assembly.

20. Power to accept gifts

- (1) The Service may accept gifts of land, money or other property on such terms and conditions, if any, as may be specified by the person or organization making the gift.
- (2) The Service shall not accept any gift if the conditions attached thereto are inconsistent with any law for the time being in force.

21. Power to borrow

The Service may with the approval of the Minister, borrow by way of loan, overdraft or otherwise from any source such sums as it may require for the performance of its function and meeting of its obligations under this Act.

22. Accountability

- (1) The Executive Chairman of the Service, shall-
 - (a) keep proper accounting records, in a manner as may be determined, from time to time, by the Board in respect of-
 - i. all revenues and expenditure of the Service;
 - ii. all its assets, liabilities and other financial transactions; and
 - iii. all other revenues collected by the Service, including income on investments.
 - (b) prepare an annual report, including financial statements, in accordance with generally accepted accounting principles and practices; and
 - (c) ensure that the available accounting resources of the Service are adequate and used economically in the most effective and efficient manner, and the
 - (d) accounting and other financial records are properly safeguarded.

23. Refund to taxpayers

- (1) There shall be refunded to taxpayers, after proper auditing by the Service, such overpayment of tax as is due.
- (2) The service shall decide on who is eligible for the refund mentioned in subsection (1) of this section subject to such rules and conditions as may be approved by the Board.
- (3) Any tax refund shall be made within 90 days of the decision of the Service made pursuant to

subsection (2) of this section, with the option of setting off against future tax by the taxpayer.

- (4) For the purposes of tax refund, the Accountant-General of the Federation shall open a dedicated account for each tax-type into which shall be paid money for settling tax refunds.

[2020 No. 1, s. 50]

- (5) The dedicated accounts created pursuant to subsection (4) shall, be administered by the Service and be funded from the respective accounts of Government into which revenue of each tax-type is remitted.

[2020 No. 1, s. 50]

- (6) For the purposes of each dedicated account, the Service shall prepare an annual budget for tax refund as may be approved by the National Assembly.

[2020 No. 1, s. 50]

24. Power of Accountant-General to deduct from source

The Accountant-General of the Federation shall have power to deduct at source, from the budgetary allocation, un-remitted taxes due from any ministry or government agency and shall not later than 30 days thereafter transfer such deductions to the Service.

PART V: TAX ADMINISTRATION AND ENFORCEMENT

25. Administration of tax

- (1) The Service shall have power to administer all the enactments listed in the First Schedule to this Act and any other enactment or law on taxation in respect of which the National Assembly may confer power on the Service.

- (2) The Service may, with the approval of the Minister by Instrument published in the *Federal Gazette*, appoint any government agency to collect revenue pursuant to the power of the Service under subsection (1) of this section.

- (3) The Service may deploy any proprietary or third-party payment, processing or other digital platform or application to collect and remit taxes due on international transactions in the supply of digital services to and from a person in Nigeria, in the case of transactions carried out through remote, digital, electronic or other such platform.

[2020 No. 1, s. 51]

- (4) The Service may deploy proprietary technology to automate the tax administration process including tax assessment and information gathering provided it gives 30 days' notice to the taxpayer.

[2021 No. 1, s. 18]

(4A) The Service may, upon written request from taxpayer who has demonstrated good cause, withdraw or grant extension to the notice referred to in subsection (4).

(4B) Any person who fails to grant access to the Service after 30 days of receipt of the notice specified in subsection (4) or the extension granted under subsection (4A), is liable to an

administrative penalty of N25,000 for each day that it fails to grant access.

- (5) The Service may receive assistance in the collection of revenue claims or any other administrative assistance in tax matters with respect to any agreement or arrangement made between the Government of the Federal Republic of Nigeria and the Government of any country or other persons or bodies as may be deemed necessary in that regard.

[2020 No. 1, s. 51]

26. Call for returns, books, documents and information

- (1) For the purposes of obtaining full information in respect of the taxation of an individual, company or any person or for the purpose of performing any function conferred on it by this Act, the Service shall give notice to any individual, company or person, requiring such individual, company or person to, within the time specified by the notice-

- (a) complete and deliver to the Service any return specified in such notice;
- (b) appear personally before an officer of the Service for examination with respect to a matter to which such notice relates;
- (c) produce or cause to be produced for examination, books, documents or records, at the place and time stated in the notice, which time may be from day-to- day, or for such period as the Service may deem necessary;
- (d) provide, orally or in writing, any information specified in such notice;
- (e) grant the Service access to records, data or information stored or otherwise residing in computers or other electronic devices, including magnetic media or cloud computing facilities maintained, operated, controlled or owned by the individual, company or person.

[2020 No. 1, s. 52]

- (2) For the purposes of subsection (1) (a)-(e), the time specified by such notice shall not be less than 30 days from the date of service of such notice.

[2020 No. 1, s. 52]

- (3) A person who defaults in complying with the provisions of this section-

- (a) where the default relates to a tax liability, is liable, in addition to the tax liability, to a penalty of 10% of the tax and interest at the prevailing Central Bank of Nigeria minimum rediscount rate; or
- (b) where the contravention relates to issues other than a tax liability, is liable to a penalty of ₦25,000.00 in the first month, and ₦10,000.00 for every subsequent month thereafter, in which the default continues.

[2020 No. 1, s. 52]

- (4) Nothing in the foregoing provision of this section or in any other provision of this Act shall be construed as precluding the Service from verifying by tax audit or investigation into any matter relating to any return or entry in any book, document accounts including those stored,

on a computer, in digital, magnetic, optical or electronic media as may, from time to time, be specified in any guideline by the Service.

- (5) A person may apply in writing to the Board for an extension of time within which to comply with the provisions of this section and section 27 of this Act, provided that the person-
 - (a) makes the application before the expiration of the time stipulated in this section for making the returns; and
 - (b) shows good cause for his inability to comply with this provision.
- (6) If the Board is satisfied with the cause shown in the application under Paragraph (b) of subsection (5), it may in writing grant the extension of the time as it may consider appropriate.

27. Call for further returns and payment of tax due

- (1) The Service may give notice in writing to any person it considers necessary requiring such person to deliver within a reasonable time specified in such notice, fuller or further returns in respect of any matter relating to the functions of the Service under this Act.
- (2) Where a tax is not paid, when it falls due under any enactment, by any person from whom it is due, whether or not the payment of that tax has been secured by a bond or otherwise, it shall be paid on demand made by the Service either on that person personally or by delivering the demand in writing to his place of abode or business, and if it is not paid on demand, the person in default shall, in addition to the 100 percent tax due and payable, also be liable to a penalty equal to the amount of tax due and payable.

28. Information to be delivered by bankers and others

- (1) Without prejudice to section 26 of this Act, every bank shall prepare upon demand by the Service, quarterly returns specifying-
 - (a) in the case of an individual, all transactions involving the sum ₦5,000,000.00 and above; or
 - (b) in the case of a body corporate, all transactions involving the sum of ₦10,000,000.00 and above, the names and addresses of all customers of the bank connected with the transaction and deliver the returns to the Service;
 - (c) the names and addresses of new customers of the bank and shall not later than the seventh day of the succeeding month deliver the returns to the Service.
- (2) Subject to subsection (1) of this section, for the purpose of obtaining information relative to taxation, the Service may give notice to any person including a person engaged in banking business in Nigeria to provide within the time stipulated in the notice, information including the name and address of any person specified in the notice:

Provided that a person engaged in banking business in Nigeria, shall not be required to disclose any additional information about his customer or his bank under this section unless

such additional disclosure is required by a notice signed by the Executive Chairman of the Service on the advice of the Technical Committee of the Board.

- (3) Any bank that contravenes the provisions of this section is liable to a penalty of ₦1,000,000 for each of the returns or information not provided or incorrect returns or information provided.”
- (4) For the purpose of subsection (3), the penalty shall be payable in respect of each quarterly return not filed by the bank.”

28A. Information to be delivered by bankers and others

- (1) In relation to international tax treaty and other exchange of information obligations and without prejudice to section 26 of this Act, every bank, insurance company, stock-broking firm, or any others. other financial institution shall prepare and submit, as may be specified by way of notice, rules, regulations, guidelines, or circulars issued by the Service, returns of-
 - (a) transactions involving the specified sum;
 - (b) names, addresses (including foreign addresses), or any other information of its customers connected with those transactions; or
 - (c) names, addresses, or any other information of new or existing customers.

[2020 No. 1, s. 53]
- (2) Any person, who fails to comply with the notice, rules, regulations, guidelines, or circulars issued by the Service for the purposes of this section is liable to an administrative penalty of ₦25,000.00 in the first month of failure, and ₦10,000.00 for every month in which the failure continues.

[2020 No. 1, s. 53]

29. Powers to access lands, buildings, books and documents

- (1) Notwithstanding anything to the contrary in any other enactment or law, an authorized officer of the Service shall at all reasonable times have free access to all lands, buildings, places, books and documents, in the custody or under the control of a public officer, institution or any other person, for the purpose of inspecting the books or documents including those stored or maintained in computers or on digital, magnetic, optical or electronic media, and any property, process or matter which the officer considers necessary or relevant for the purpose of collecting any tax under any of the relevant enactment or law or for the purpose of carrying out any other function lawfully conferred on the Service or considered likely to provide any information required for the purposes of any of those enactments or any of those functions and may, without fee or reward, make extract from, or copies of, such books or documents.
- (2) Where the hard copies of any of the books or documents mentioned in subsection (1) of this section are not immediately available because they are stored in a computer or on digital, magnetic, optical or electronic media, the Service shall take immediate possession of such removable media and the related removable equipment or computer used to access the store

documents on the media in order to prevent the accidental or intentional destruction, removal or alteration of records and documents, especially where such could be needed as potential evidence in the investigation or criminal proceedings.

- (3) Where the Service is able to obtain in place of taking physical possession of such equipment, computer or storage media under subsection of this section, and the Service possesses the ability, equipment and computer software to make exact duplicate copies of all information stored on the computer hard drive and preserve all the information exactly as it is on the original computer, the Service shall make such copy and use it as digital evidence during the investigation or criminal proceedings.
- (4) The occupier of a land, building or place that is entered or proposed to be entered by an authorized officer, shall-
 - (a) provide the officer with all reasonable facilities and assistance for the effective exercise of powers under this section; and
 - (b) answer questions relating to the effective exercise of the powers under this section, orally, or if required by the officer, in writing or by statutory declaration.
- (5) Notwithstanding subsection (1) of this section, the authorized officer shall not enter any private dwelling except with the consent of an occupier or pursuant to an authorization issued under subsection (7) of this section.
- (6) A judicial officer upon an application by an officer of the Service may authorise the officer by warrant to enter into any premises.
- (7) Every authorization issued under subsection (7) of this section shall-
 - (a) be in the form prescribed in the Third Schedule of this Act;
 - (b) be directed to a named officer of the Service;
 - (c) be valid for a period of 3 months from the date of its issue or such lesser period as the judicial officer considers appropriate;
 - (d) state its period of validity, or the date on which it expires; and
 - (e) notwithstanding paragraphs (c) and (d) of this subsection, be renewable by the judicial officer on application.
- (8) An officer exercising the power of entry conferred by an authorization issued under subsection (6) of this section shall produce the written authorization and evidence of identity-
 - (a) on first entering the private dwelling; and
 - (b) whenever subsequently reasonably required to do so.

30. Power to remove books and documents

- (1) An officer of the Service authorized by the Executive Chairman, may remove books or documents accessed under section 29 of this Act to make copies.
- (2) Any copy of the books or documents removed shall be made and the books or documents returned as soon as practicable.
- (3) A copy of a book or document or digital evidence certified by or on behalf of the Executive Chairman is admissible in evidence in court as if it were the original.
- (4) The owner of a book or document that is removed under this section is entitled to inspect and obtain a copy of the book or document, at the owner's own expense, at the premises to which the book or document is moved to-
 - (a) at the time the book or document is moved to the premises; and
 - (b) at reasonable times subsequently.

31. Power of substitution

- (1) The Service may by notice in writing appoint any person to be the agent of a taxable person if the circumstances provided in sub-section (2) of this section makes it expedient to do so.
- (2) The agent appointed under subsection (1) of this section may be required to pay any tax payable by the taxable person from any money which may be held by the agent of the taxable person.
- (3) Where the agent referred to in subsection (2) of this section defaults, the tax shall be recoverable from him.
- (4) For the purposes of this section, the Service may require any person to give information as to any money, fund or other assets which may be held by him for, or of any money due from him to, any person.
- (5) The provisions of this Act with respect to objections and appeals shall apply to any notice given under this section as if such notice were an assessment.

32. Addition for non-payment of tax and enforcement of payment

- (1) Subject to subsection (3) of this section, if any tax is not paid within the periods prescribed-
 - (a) a sum equal to 10 per cent of the amount of the tax payable shall be added thereto, and the provisions of the Act relating to the collection and recovery of tax shall apply to the collection and recovery of such sum;
 - (b) in the case of Naira remittances, the tax due shall carry interest at the prevailing minimum rediscount rate of the Central Bank of Nigeria plus spread to be determined by the Minister from the date when the tax becomes payable until it is paid, and the provisions of the Act

relating to collection and recovery of tax shall apply to the collection and recovery of the interest;

- (c) in the case of foreign currency remittance, the tax due shall incur interest at the prevailing London Inter Bank Offered Rate or the prevailing minimum rediscount rate of the Central Bank of Nigeria whichever is higher, plus spread to be determined by the Minister from the date when the tax becomes payable until it is paid, and the provisions of the Act relating to collection and recovery of tax shall apply to the collection and recovery of the interest;
 - (d) the Service shall serve a demand notice upon the company or person in whose name a tax is chargeable and if payment is not made within one month from the date of the service of such demand notice, the Service may proceed to enforce payment under this Act; and
 - (e) an addition imposed under this subsection shall not be deemed to be part of the tax paid for the purpose of claiming relief under any of the provisions of this Act.
- (2) Any person who without lawful justification or excuse fails to pay a tax within the period of one month prescribed in subsection (1) (d) of this section, commits an offence under this Act.
- (3) The Board may, for any good cause shown, remit the whole or any part of the addition due under subsection (1) of this section.

33. Power to distrain

- (1) Without prejudice to any other power conferred on the Board for the enforcement of payment of tax due from a company, where an assessment has become final and conclusive and a demand notice has, in accordance with the provisions of the relevant tax laws in the First Schedule to this Act, been served upon the taxable person or upon the person in whose name the taxable person is chargeable, then, if payment of the tax is not made within the time limited by the demand notice, the Board may in the prescribed form, for the purpose of enforcing payment of the tax due-
- (a) distrain the taxpayer by his goods or other chattels, bonds or other securities;
 - (b) distrain upon any land, premises, or place in respect of which the taxpayer is the owner and, subject to the following provisions of this section, recover the amount of tax due by sale of anything so distrained.
- (2) The authority to distrain under this section shall be in the form contained in the Fourth Schedule to this Act and such authority shall be sufficient warrant and authority to levy by distraint the amount of any tax due.
- (3) For the purpose of levying any distraint under this section, any officer duly authorized by the Board may execute any warrant of distraint and if necessary break open any building or place in the day time for the purpose of levying such distraint, and he may call to his assistance any police officer and the police officer shall, when required, aid and assist in the execution of any warrant of distraint and in levying distraint.
- (4) Things distrained under this section may, at the cost of the taxpayer, be kept for 14 days

and at the end of that time if the amount due in respect of the tax, cost and charges of any incidental to the distraint are not paid, they may, subject to subsection of this section, be sold at any time thereafter.

- (5) Out of the proceeds of such sale, there shall, in the first place, be paid the cost or charges of any incidental to the (sale and keeping of the) distraint, and disposal thereunder and in the next place the amount due in respect of the tax, and the balance (if any) shall be payable to the taxpayer upon demand being made by him or on his behalf within one year of the date of sale.
- (6) Nothing in this section shall be construed so as to authorize the sale of an immovable property without an order of a High Court, made on application in such form as may be prescribed by the rules of court.
- (7) In exercise of the powers of distraint conferred by this section, the person whom the authority is granted under subsection (3) of this section may distrain goods, chattels and effects belonging to the debtor wherever the same may be found in Nigeria.

34. Recovery of tax

- (1) Without prejudice to any other provision of this Act or any other law in the First Schedule to this Act, any amount due by way of tax shall constitute a debt to the Service and may be recovered by a civil action brought by the Service.
- (2) Where any tax has been under-assessed or erroneously repaid, the person who should have paid the amount under-assessed or to whom the repayment has erroneously been made shall on demand by the proper officer, pay the amount under-assessed or erroneously repaid, as the case may be, and any such amount may be recovered as if it were tax to which a person to whom the amount was so under-assessed or erroneously repaid were liable:

Provide that the appropriate officer shall not make any such demand after 5 years from the date of such under-assessment or erroneous repayment unless such under-assessment or erroneous repayment was caused by the production of a document or the making of a statement which was untrue in any material particular.

35. Tax investigations

- (1) The Service shall employ Special Purpose Tax Officers to assist any relevant law enforcement agency in the investigation of any offence under this Act.
- (2) Notwithstanding anything to the contrary in any other enactment or law, the Service shall have the power to investigate or cause investigation to be conducted to ascertain any violation of any tax law whether or not such violation has been reported to the Service.
- (3) In conducting any investigation under subsection (2) of this section, the Service may cause investigation to be conducted into the properties of any taxable person if it appears to the Service that the lifestyle of the person and extent of the properties are not justified by his source of income.

- (4) Where any investigation under this section reveals the commission of any offence or an attempt to commit any offence, the Service shall, pursuant to section 47 of this Act, undertake the prosecution of the offences.

36. Enforcement of powers

- (1) The Service may co-opt the assistance and co-operation of any of the law enforcement agencies in the discharge of its duties under this Act.
- (2) The law enforcement officers shall aid and assist an authorized officer in the execution of any warrant of distraint and the levying of distraint.
- (3) Any tax officer armed with the warrant issued by a Judicial officer and accompanied by a number of law enforcement officers, as may be determined by the Executive Chairman shall-
 - (a) enter any premises covered by such warrant and search for, seize and take possession of any book, document or other article used or suspected to have been used in the commission of an offence;
 - (b) inspect, make copies of, or take extracts including digital copies from any book, record, document or computer, regardless of the medium used for their storage or maintenance;
 - (c) search any person who is in or on such premises;
 - (d) open, examine and search any article, container or receptacle;
 - (e) open any outer or inner door or window of any premises and enter or otherwise forcibly enter the premises and every part thereof; or
 - (f) remove by reasonable force any obstruction to such entry, search, seizure or removal as he is empowered to effect.
- (4) No person shall be bodily searched under this section except by a person who is of the same gender as the person to be bodily searched.

37. Power to pay reward

- (1) The Service may, with the approval of the Board, pay any reward to any person, not being a person employed in the Service; in respect of any information that may be of assistance to the Service in the performance of its duties under this Act upon meeting such conditions as may be determined by the Board and the quantum of such reward shall also be at the discretion of the Board.
- (2) The identity of the person who gave information to the Service shall be confidential and any current or former member of the Service or Board that the identity of such person shall be dealt with in accordance with the provision of section 39 of this Act with regard to confidential information.

38. Immunity from actions. etc.

An officer of the Service shall be entitled to protection under the Public Officers Protection Act.
[Cap. P41 LFN 2004]

39. Information and documents to be confidential

- (1) Without prejudice to the provisions of any other Act concerning data privacy, data protection and unlawful disclosure of taxpayer information, taxpayer information shall be confidential.
[2020 No. 1, s. 54]
- (2) Except as otherwise provided under this Act, any other law or any enabling agreement or arrangement or as otherwise authorized by the Minister, any member or former member of the Board or any employee or former employee of the Service or any agent or any other person who communicates or attempts to communicate taxpayer information to any person other than to a person legally authorised to collect the tax or misuses the information commits an offence and shall be liable on conviction to a fine not exceeding ₦1,000,000.00 or to imprisonment for a term not exceeding three years or to both.
[2020 No. 1, s. 54]

PART V: OFFENCES AND PENALTIES

40. Failure to deduct or remit tax

Any person who being obliged to deduct any tax under this Act or the listed in the First Schedule to this Act, but fails to deduct, or having deducted fails to pay to the Service within 30 days from the date the amount was deducted or duty to deduct arose, commits an offence and shall, upon conviction, be liable to pay the tax withheld or not remitted in addition to a penalty of 10 per cent of the tax not remitted per annum and interest at the prevailing Central Bank of Nigeria re-discount rate and imprisonment for period of not more than three years.

41. Obstruction, etc.

Any person who-

- (a) obstructs, hinders, molests or assaults any person or authorized office the performance of any function or the exercise of any power under this Act;
- (b) does anything which impedes or is intended to impede the carrying o any search, seizure, removal or distraint;
- (c) rescues, damages or destroys anything so liable to seizure, removal distress or does anything intended to prevent the procuring or giving of evidence to whether or not anything is liable to seizure, removal or distraint;
- (d) prevents the arrest of any person by a person duly engaged or acting or rescues any person so arrested, commits an offence and shall be liable on conviction to a fine not exceeding ₦200,000,00 or imprisonment for a term not exceeding 3 years or to both fine and imprisonment,

42. False declaration

- (1) If any person-
 - (a) makes or signs, or causes to be made or signed, delivers or causes to be delivered to the Service or any officer of the Service, any declaration, notice, certificate or other document; or
 - (b) makes any statement in answer to any question or enquiry put to him by an officer which he is required to answer by or under this Act or any other enactment or law, being a document or statement produced or made for any purpose of tax, which is untrue in any material particular, commits an offence under this section.
- (2) Where by reason of any such document or statement required to be produced under subsection (1) of this section the full amount of any tax payable is not paid or any overpayment is made in respect of any repayment of tax, the amount of tax unpaid or the overpayment shall be recoverable as a debt due to the Service.
- (3) Person who commits an offence under this section shall be liable on conviction to a fine not exceeding ₦200,000.00 in addition to payment of the amount of tax unpaid or over payment made in respect of any repayment or to imprisonment for a term not exceeding 3 years or to both fine and imprisonment.

43. Counterfeiting documents, etc.

Any person who-

- (a) counterfeits or falsifies any document which is required by or for the transaction of any business under this Act;
- (b) knowingly accepts, receives or uses any document so counterfeited or falsified;
- (c) Alters any such document after it is officially issued;
- (d) counterfeits any seal, signature, initial or other mark of, or used by, any officer for the verification of such a purpose relating to tax; or
- (e) being an employee of the services conspires, connives or participates in the commission of any of the offences in paragraphs (a) to (d) of this section,

commits an offence and shall be liable on conviction to a fine not exceeding ₦200,000.00 or to imprisonment for a term not exceeding 3 years or to both such fine and imprisonment.

44. Penalties for offences for authorized and unauthorized person

Any person who is appointed for the due administration of this Act or employed in connection with the assessment and collection of a tax who-

- (a) demands from any company an amount in excess of the authorized assessment of the tax;

- (b) withholds for his own use or otherwise any portion of the amount of tax collected;
- (c) renders a false return, whether orally or in writing, of the amount of tax collected or received by him;
- (d) defrauds any person, embezzles any money or otherwise uses his position to deal wrongfully with the Service;
- (e) steals or misuses the documents of the Service; or
- (f) compromises on the assessment or collection of any tax,

commits an offence and shall be liable on conviction to a fine equivalent to 200 per cent of the sum in question or to imprisonment for a term not exceeding 3 years or to both such fine and imprisonment.

45. Penalty where offenders are armed

- (1) Any person who, in the commission of an offence under this Act, is armed with any offensive weapon commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 5 years.
- (2) A person who, while armed with an offensive weapon, causes injury to any officer or authorized officer of the Service in the performance of any function or duty under this Act, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 10 years.

46. Unlawful assumption of character of an authorized officer

If, for the purpose of obtaining admission to any building or other place or of doing or procuring to be done any act which he would not be entitled to do or procure to be done of his own authority, or for any other unlawful purpose, any person, not being an authorized officer, assumes the name, designation or impersonates the character of an authorized officer, commits an offence and shall be liable on conviction to a fine not exceeding ₦200,000.00 or to imprisonment for a term not exceeding 3 years.

47. Prosecution

The Service shall have powers to employ its own legal officers who shall have powers to prosecute any of the offences under this Act subject to the powers of the Attorney General of the Federation.

48. Power to compound offences

- (1) The Service may compound any offence under this Act by accepting a sum of money not exceeding the maximum fine specified for the offence.
- (2) The Service shall issue an official receipt for any money received under subsection (1) of this section.

49. General penalty

- (1) Any person who contravenes any provisions of this Act for which no specific penalty was provided, commits an offence and shall be liable on conviction to a fine not exceeding ₦50,000.00 or imprisonment for a term of imprisonment not exceeding six months or to both fine and imprisonment.
- (2) Where an offence under this Act is committed by a body corporate or firm or other association of individuals-
 - (a) every director, manager, secretary or other similar officer of the body corporate;
 - (b) every partner or officer of the firm;
 - (c) every person concerned in the management of the affairs of the association; or
 - (d) every person who was purporting to act in any capacity, commits an offence and shall be liable to be proceeded against and punished for the offence in like manner as if he had himself committed the offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

50. Official secrecy and confidentiality

- (1) Every person in an official duty or being employed for the administration of this Act or otherwise, that has access to taxpayer information shall regard and deal with such information as secret and confidential.’’
- (2) A person in possession of, or control of any document, information, return of assessment list or copy of such list relating to the income or profits or losses of any person, who at any time communicates or attempts to communicate such information or anything contained in such document, return, list or copy to any person-
 - (a) other than a person to whom he is authorized by the Service to communicate it;
 - (b) otherwise than for the purpose of this Act or of any enactment in Nigeria imposing tax on the income of persons, commits an offence under this Act.
- (3) A person appointed or employed under this Act shall not be required to produce any return, document or assessment or to divulge or communicate any information that comes into his possession in the performance of his duties except as may be necessary in order to institute a prosecution, or in the course of a prosecution for any offence committed in relation to any tax in Nigeria.
- (4) Where under any law in force in respect of any double taxation treaty with any country, provision is made for the allowance of relief from income tax in respect of the payment of income tax-in Nigeria, the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorized officer of the Government in that country of such facts as may be necessary to enable the proper relief to be given in cases where relief is claimed from the

tax in Nigeria or from income tax in that country.

- (5) Where any agreement or arrangement with any other country, government or tax authority for exchange of information or with respect to relief for double taxation of income or profits includes provisions for the exchange of taxpayer information with that country for the purpose of implementing a tax relief or preventing avoidance of tax, or for such other purposes as may be enshrined in the agreement or arrangement, the obligation as to secrecy imposed by this Act shall not prevent the disclosure of such information to the authorised officers of the Government of such country.

[2020 No. 1, s. 55]

51. Board to be subject to the general direction of the Minister

- (1) In the exercise of the powers and duties conferred upon the Board by this Act, the Board shall be subject to the general direction of the Minister and any written direction, order or instruction given by him after consultation with the Executive Chairman shall be carried out by the Board:

Provided that the Minister shall not give any directive, order or instruction in respect of any particular person which would have the effect of requiring the Board to increase or decrease any assessment of tax made or to be made or any relief given or to be given or to defer the collection of any tax or judgment debt due, or which would have the effect of initiating, forbidding the initiation of withdrawing or altering the normal course of any proceeding whether civil or criminal, relating either to the recovery of any tax or to any offence under any of the laws listed in the First Schedule.

- (2) In any proceeding whether civil or criminal under this Act or any of the laws listed in the First Schedule, any act, matter or thing done by the Service or the Board in pursuance of the said laws shall not be subject to challenge on the ground that such act, matter or thing was not or was not proved to be in accordance with any directive, order or instruction given by the Minister.

52. Delegation of powers of the Board

- (1) Any power conferred and any duty imposed upon the Board may be exercised or performed by the Board or by an officer authorized generally or specifically in that behalf by the Board.
- (2) Notwithstanding the provisions of subsection (1) of this section, the Board may, at any time and at its discretion, reverse or otherwise modify any decision of any officer affecting any tax or taxable income, whether or not the discretion to make the decision was conferred on the officer by any law specified in the First Schedule or whether or not the officer was authorized by the Service to make the decision, and the reversal or modification of the decision by the Board shall have effect as if it were the original decision made in respect of the matter concerned.
- (3) An order, ruling or directive made or given by an approved committee of the Board pursuant to this section, shall not be treated as an order, ruling or directive of the Board, until the order ruling or directive has been ratified by the Board pursuant to the powers vested on the Board under this Act.

53. Signification

Anything done or required to be done by the Service in pursuance of any of its powers or duties under this Act or the laws listed the First Schedule may be signified under the hand of the Executive Chairman or of an officer who has been authorized by the Board for the purpose of this section.

54. Imposition of surcharge

- (1) If the Service is satisfied that a person who is or was in its employment-
 - (a) is or was responsible for any improper payment of moneys from the fund of the Service or for any payment of such money which is not duly documented;
 - (b) is or was responsible for any deficiency in, or for the destruction of, any money, security, store or other property of the Service;
 - (c) being or having been an officer, fails or has failed to keep proper accounts or record; or
 - (d) has failed to make any payment, or is responsible for any delay in the payment of moneys for the Service to any person to whom such payment is due under any contract, agreement or arrangement entered into between that person and the Service,

and if a satisfactory explanation is not furnished to the Service within a period specified by the Board with regard to the failure to collect, improper payment, payment not duly documented, deficiency or destruction, failure to keep proper accounts or records, failure to make payment or delay in making payment, the Service may surcharge the said person such sum as it may think fit.

- (2) Any action taken under subsection (1) of this section shall be subject to the approval of the Board and when such approval is obtained the Executive Chairman shall notify the person surcharged under this section.
- (3) The Board may at any time withdraw any surcharge in respect of which a satisfactory explanation has been received from the person concerned or if it otherwise appears that no surcharge should have been made, the Board shall at once inform the Executive Chairman of such withdrawal.
- (4) The amount of any surcharge imposed under subsection (1) of this section and not withdrawn under subsection (3) of this section shall be a debt due to the Service from the person against whom the surcharge is imposed and may be sued for and recovered in any court in any suit initiated by the Service for its recovery and may also be recovered by deduction from the salary of the person surcharged if the Board so directs.

55. Limitation of suits against the Service, etc.

- (1) Subject to the provisions of this Act, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against any member, officer or employee of the Service.

- (2) Notwithstanding anything contained in any other law or enactment, no suit against the Executive Chairman, a member of the Board, or any other officer or employee of the Service for any act done in pursuance or execution of this Act or any other law or enactment, or of any public duty or authority or in respect of any alleged neglect or default in the execution of this Act or any other law or enactment, duty or authority, shall lie or be instituted in any court unless it is commenced-
- (a) within three months next after the act, neglect or default complained of; or
 - (b) in the case of a continuation of damage or injury, within six months next after the ceasing thereof.
- (3) No suit shall be commenced against the Executive Chairman, a member of the Board, or any other officer or employee of the Service before the expiration of a period of one month after written notice of the intention to commence the suit shall have been served on the Service by the intending plaintiff or his agent.
- (4) The notice referred to in subsection (3) of this section shall clearly and explicitly state the-
- (a) cause of action;
 - (b) particulars of claim;
 - (c) name and place of abode of the intending plaintiff; and
 - (d) relief which he claims.

56. Service of documents

A notice, summons or other document required or authorized to be served on the Service under the provisions of this Act or any other law or enactment may be served by delivering it to the Executive Chairman or by sending it by registered post addressed to the Executive Chairman at the principal office of the Service.

57. Restrictions on execution against property of the Service

- (1) In any action or suit against the Service no execution or attachment of process in the nature thereof shall be issued against the Service unless not less than three months notice of the intention to execute or attach has been given to the Service.
- (2) Any sum of money which by the judgment of any court has been awarded against the Service shall, subject to any direction given by the court, where no notice of appeal against the judgment has been given, be paid from the fund of the Service.

58. Indemnity

The Executive Chairman, a member of the Board or any officer or employee of the Service shall be indemnified out of the assets of the Service against any liability incurred by him in defending any proceeding, whether civil or criminal, if the proceeding is brought against him in

his capacity as Executive Chairman, a member of the Board, officer or other employee of the Service.

PART VIII-MISCELLANEOUS PROVISIONS

59. Establishment of Tax Appeal Tribunal

- (1) A Tax Appeal Tribunal is established, as provided for in the fifth Schedule to this Act.
- (2) The Tribunal shall have power to settle disputes arising from the operations of this Act and under the First Schedule.

60. Directives by the Minister,

The Minister may give to the Service or the Executive Chairman such directives of a general nature or relating generally to matters of policy with regards to the exercise of its or his functions as he may consider necessary and the Service or the Executive Chairman shall comply with the directives or cause them to be complied with.

61. Power to make regulations

The Board may with the approval of the Minister, make rules and regulations as in its opinion are necessary or expedient for giving full effect to the provisions of this Act and for the due administration of its provisions and may in particular, make regulations prescribing the-

- (a) forms for returns and other information required under this Act or any other enactment or law; and
- (b) procedure for obtaining any information required under this Act or any other enactment or law.

62. Repeal of part I of Cap. 60 LFN, 1990

- (1) Part I of the Companies Income Tax Act (in this Act referred to as “the repealed enactment”) is repealed.
- (2) The Federal Board of Inland Revenue established pursuant to the repealed enactment is dissolved.
- (3) The repeal of the enactment specified in subsection (1) of this section shall not affect anything done or purported to have been done under the repealed enactment.

63. Savings and transitional provisions relating to staff or employees

- (1) Notwithstanding anything to the contrary in this Act, a director, employee, staff or officer, who immediately before the commencement of this Act held office in the Federal Board of Inland Revenue (including the Federal Inland Revenue Service hereinafter referred to as “the

former Board”) existing immediately before the commencement of this Act and who has been made an offer of employment by the Service, is deemed to have been transferred to the Service established under this Act on terms and conditions not less favourable than those obtaining immediately before the commencement of this Act and service or employment in the former Board is deemed to be service or employment in the Service established under this Act for purposes of pension.

- (2) Every director, employee, staff or officer transferred into the Service by virtue of subsection (1) of this section shall notify the Service established under this Act in writing within 60 days after the commencement of this Act or after he receives an offer of appointment from the Board (whichever is later) of his acceptance and any director, employee, staff or officer who fails to notify the Service is deemed to have rejected the offer.
- (3) Any director, employee, staff or officer referred to in subsection (2) is deemed to be an employee of the Service established under this Act, beginning on the day that this Act comes into force and ending on the expiry of the period of grace under subsection (2) or on the day of his written refusal and the Service established under this Act is deemed to be his employer for all purposes during that period.
- (4) An employee who is not transferred or who refuses the transfer or a job offer made by the Board established under this Act, as specified in subsection (1) of this section, shall be transferred to the Office of the Head of the Civil Service of the Federation for redeployment in the Civil Service of the Federation within the time specified in subsection (2) of this section.

64. Other savings and transitional provisions

- (1) There shall be vested in the Service established under this Act and without further assurance, all assets, funds, resources and other immovable property which immediately before the commencement of this Act were vested in the former Board existing immediately before the commencement of this Act.
- (2) All rights, interest, obligations and liabilities of the former Board existing immediately before the commencement of this Act under any contract or instrument, or in law or in equity apart from any contract or instrument, shall by virtue of this Act be assigned to and vested in the Service established under this Act.
- (3) Any contract or instrument referred to in subsection (2) of this section shall be of the same force and effect against or in favour of the Service established under this Act and shall be enforceable as fully and effectively as if, instead of the former Board existing immediately before the commencement of this Act, the Service established under this Act had been named or had been a party.
- (4) The Service established under this Act shall be subject to all obligations and liabilities to which the former Board existing immediately before the commencement of this Act was subject immediately before the commencement of this Act, and all other persons shall as from the commencement of this Act have the same rights, powers and remedies against the Service as they had against the former Board existing immediately before the commencement of this Act.

- (5) Any proceeding or cause of action pending or existing immediately before the commencement of this Act by or against the former Board existing immediately before the commencement of this Act in respect of any right, interest, obligation or liability of the former Board may be continued, or as the case may require, be commenced and the determination of a court of law, tribunal or other authority or person may be enforced by or against the Service to the same extent that such cause of action or determination might have been continued, or enforced by or against the former Board as if this Act had not been made.
- (6) Any regulation, order, bye-law or notice made or issued or deemed to be made or issued by, or for the purposes of the former Board existing immediately before the commencement of this Act shall be deemed to have been made or issued by or for the purposes of the Service and shall continue in force until revoked or as amended, subject to such modifications as may be applicable to the Service established under this Act.

65. Continuation of Board members

Subject to the provisions of this Act, the Executive Chairman of the former Board is deemed to have been transferred to the Service established under this Act in the same capacity.

66. Continuation and completion of disciplinary proceedings.

- (1) As from the commencement of this Act, any disciplinary proceeding pending or existing against any employee of the government who has opted into the service of the former Board, shall be continued and completed by the Board established under this Act.
- (2) An appeal or grievance already filed but which has not been finally disposed of on the coming into force of this Act shall be dealt with and disposed of in accordance with the Public Service Rules as if this Act had not come into force.

67. Rights and obligations transferred

- (1) The administration and control of all rights, obligations and liabilities that were under the administration and control of the former Board are hereby transferred to the Service established under this Act.
- (2) The administration of any real property that were immediately before the coming into force of this section under the administration or administrative responsibility of the former Board or its agencies or bodies for the purposes of that former Board are transferred to the Service established under this Act.
- (3) All orders, rules, regulations, decisions, directions, licences, authorizations, certificates, consents, approvals, declarations, designations, permits, registration, rates or other documents that are in force before the coming into force of this Act and that are made or issued by the Minister, Chairman of the former Board or any person under their control shall continue in force as if they were made, or issued by the Minister, the Board established under this Act, the Executive Chairman or an employee of the Service as the case may be, until they expire or are repealed, replaced, rescinded or altered.

- (4) Every reference to the former Board, the Minister, Chairman or any person under their control or a document issued in the name of the former Board, Minister, Chairman or employee of the former Board to be read, unless the context otherwise requires, as a reference to the Service, the Minister, Board, Executive Chairman, or an employee of the Service established under this Act, as the case may be.
- (5) Every affidavit sworn or document duly certified by an officer in the Service of the Federal Board of Inland Revenue before the coming into force of this Act has the same probative value as if it were sworn or certified by an employee of the Service on or after that day.

68. Relevance of other laws

- (1) This Act and the laws listed in the First Schedule to this Act shall take precedence over any other laws with regards to the administration, assessment, collection, accounting and enforcement of taxes and levies due to the Federal Government of Federation in Nigeria, except in cases such tax or levy is a subject of litigation in a court of competent jurisdiction, and if the provisions of any other law, including the enactments in the First Schedule are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provisions of that other law shall, to the extent of the inconsistency, be void.
- (2) Subject to subsection (1) and notwithstanding any other law imposing taxes or levies In Nigeria, the Service shall be the primary agency of the Federal Government of Nigeria responsible for the administration, assessment, collection, accounting and enforcement of taxes and levies due to the Federation and the Federal Government or any of its agencies, except as may be authorised by the Minister responsible for Finance by regulation as approved by the National Assembly.
- (3) Subject to subsection (1), it shall be an offence for any person to carry out or authorise another to carry out the function of administering, assessment, collection, accounting or enforcement of taxes and levies due to the Federation and Federal Government of Nigeria, except as may be provided under this Act or any of the laws listed in the First Schedule to this Act or a authorised by the Minister for Finance by regulation as approved by the National Assembly.
- (4) For the purpose of enforcing compliance with the provisions of the relevant tax laws and preventing tax revenue loss, the Service may collaborate with relevant Ministries, Department, Agencies or institutions of the Federal Government.
- (5) Any person or agency of the Federal Government that becomes aware of any incidence requiring tax investigation, enforcement or compliance, in the course of the performance of its functions, shall refer same to the Service for necessary action and the Service may in accordance with the provisions of this Act collaborate with such person or agency in carrying out required investigation, enforcement or compliance measures
- (6) Any person who commits an offence under this section or contravenes any of the provisions of the section is liable on conviction to imprisonment for a term not exceeding five years or to a fine of N10,00,00 or both.”

69. Interpretation

In this Act-

“authorized officer” means any person employed in the Service or, for the time being, performing duties in relation to tax who has been specifically authorized by the Board or the Executive Chairman to perform or carry out specific functions under this Act;

“Board” means the management Board of the Service established under section 3 (1) of this Act;

“book” includes any register, document or other record of information and any account or accounting record however compiled, recorded or stored, whether in written or printed form or micro-film, digital, magnetic or electronic form or otherwise;

“Chairman” means the Chairman of the Board appointed pursuant to section 3 (2) (a) of this Act;

“consultants” includes accountants, legal practitioners or any other recognized professionals that have been certified by their relevant professional bodies in Nigeria;

“document” includes any record of information supporting accounts and accounting records, including reports or correspondences or memoranda or minutes of meeting, however compiled, recorded or stored, whether in written or printed form or micro-film, digital, magnetic, electronic or optical form or otherwise and all types of information stored in computer and any other similar equipment;

“Executive Chairman” means the Executive Chairman of the Service appointed under section 11 of this Act;

“Government” means the Government of the Federation and shall include the Federal Capital Territory or, as the case may be, a Government of a State;

“Gross misconduct” referred to in section 5 (g) has the meaning ascribed to it in the Public Service Rules;

“member” means a member of the Board appointed under section 3 of this Act and includes the Chairman;

“Minister” means the Minister charged with responsibility for matters relating to finance and **“Ministry”** shall be construed accordingly;

“Nigeria”, for the purposes of this Act and the laws listed in the First Schedule to this Act, means the Federal Republic of Nigeria, and when used in a geographical sense, includes the territorial waters of the Federal Republic of Nigeria, and any area outside the territorial waters, including the continental shelf, which in accordance with international law has been or may hereafter be designated, under the law of the Federal Republic of Nigeria, as an area within which the right of the Federal Republic of Nigeria with respect to the seabed, its subsoil, its superjacent waters and their natural resources may be exercised now and in the future.

[2020 No. 1, s. 56]

“non-oil revenue collected” shall be construed to refer to all revenues collected other than revenue derivable from petroleum profit tax;

“person” includes a company or body corporate and any unincorporated body of persons;

“President” means the President of the Federal Republic of Nigeria;

“Private dwelling” means any building or part of a building occupied as residential accommodation (including any garage, shed and other building used in connection therewith)

“Service” means the Federal Inland Revenue Service established under section 1 of this Act;

“Special Purpose Tax Officer” for this purpose refers to specially designated Tax Officers for the purpose of tax investigation and tax enforcement who shall be appointed from time to time and shall have the powers of Police Officers;

“tax” includes any duty, levy or revenue accruable to the government in full or in part under this Act, the laws listed in the First Schedule to this act or any other enactment or law;

“taxable person” includes an individual or body of individuals, family, corporations sole, trustee or executor or a person who carries out an economic activity in a place, a person exploiting tangible or intangible property for the purpose of obtaining income by way of trade or business or person or agency of government acting in that capacity.

“taxpayer information” includes:

- (i) any information received or generated by the Service pursuant to its powers under this Act or any extant Legislation,
- (ii) any information in any form received, accessed or produced by the Service under any agreement or arrangement with any country, government or tax authority, such as Double Taxation Agreements, Tax Information Exchange Agreements, and Common Reporting Standard, Country-by-Country Reporting or any other exchange of information agreement or arrangement,
- (iii) written or electronic documents, returns, assessments, lists and copies of such lists relating to profits or items of profits of any person or to such matter which forms the basis of any agreement or arrangement with any country, government or tax authority.

[2020 No. 1, s. 56]

70. Short Title

This Act may be cited as the Federal Inland Revenue Service (Establishment) Act, 2007.

SCHEDULES
FIRST SCHEDULE

Sections 2, 25 and 68

LEGISLATION ADMINISTERED BY THE SERVICE

1. Companies Income Tax Act Cap. 60 LFN, 1990.
2. Petroleum Profits Tax Act Cap. 354 LFN, 1990.
3. Personal Income Tax Act No. 104, 1993.
4. Capital Gains Tax Act Cap. 42 LFN, 1990.
5. Value Added Tax Act 1993 No. 102, 1993.
6. Stamp Duty Act Cap. 411 LFN, 1990.
7. Taxes and Levies (Approved List for Collection) Act 1998 No.2, 1998.
8. All regulations, proclamation, government notices or rules issued in terms of these legislation.
9. Any other law for the assessment, collection and accounting of revenue accruable to the Government of the Federation as may be made by the National Assembly from time to time or regulation incidental to those laws, conferring any power, duty and obligation on the Service.
10. Enactment or Laws imposing Taxes and Levies within the Federal Capital Territory.
11. Enactment or Laws imposing collection of taxes, fees and levies collected by other government agencies and companies including signature bonus, pipeline fees, penalty for gas flared, depot levies and licences, fees for Oil Exploration Licence (OEL), Oil Mining Licence (OML), Oil Production Licence (OPL), royalties, rents (productive and non-productive), fees for licences to operate drilling rigs, fees for oil pipeline licences, haulage fees and all such fees prevalent in the oil industry but not limited to the above listed.

SUPPLEMENTARY PROVISIONS RELATING TO THE BOARD

Proceedings of the Board

1. Subject to this Act and section 27 of the Interpretation Act, the Board shall have power to regulate its proceedings and may make standing orders with respect to the holding of its meetings, and those of its committees, notices to be given, the keeping of minutes of its proceedings, the custody and production for inspection of such minutes and such other matters as the Board may, from time to time determine.
2.
 - (1) There shall be at least four ordinary meetings of the Board in every calendar year and subject thereto, the Board shall meet whenever it is convened by the Chairman, and if the Chairman is requested to do so by notice given to him by not less than four other members, he shall convene a meeting of the Board to be held within 14 days from the date on which the notice was given.
 - (2) Every meeting of the Board shall be presided over by the Chairman and if the Chairman is unable to attend a particular meeting, the members present at the meeting shall elect one of them to preside at the meeting.
3. The quorum of any meeting of the Board shall consist of the Chairman (or in an appropriate case, the person presiding at the meeting pursuant to paragraph 2 of this Schedule) and four other members, except that any quorum must include at least two members outside the Service.
4. The Board shall meet for the conduct of its business at such places and on such days as the Chairman may appoint.
5. A question put before the Board at a meeting shall be decided by consensus and where this is not possible, by a majority of the votes of the members present and voting.
6. The Chairman shall, in the case of an equality of votes, have a casting vote in addition to his deliberative vote.
7. Where the Board seeks the advice of any person on a particular matter, the Board may invite that person to attend for such period as it deems fit, but a person who is invited by virtue of this paragraph shall not be entitled to vote at any meeting of the Board and shall not count towards the quorum.

Committees

8. The Board may appoint one or more committees to carry out on behalf of the Board such of its functions as the Board may determine and report on any matter with which the Board is concerned.

9. A committee appointed under paragraph 8 of this Schedule shall be presided over by a member of the Board and shall consist of such number of persons (not necessarily all members of the Board) as may be determined by the Board, and a person other than a member of the Board shall hold office on the committee in accordance with the terms of his appointment.

10. A decision of a committee of the Board shall be of no effect until it is confirmed by the Board.

Miscellaneous

11. The fixing of the seal of the Service shall be authenticated by the signature of the Executive Chairman and the Secretary to the Board or the Executive Chairman and such other person authorized by the Board to act for that purpose.

12. A contract or an instrument which, if made or executed by any person not being a body corporate, would not be required to be under seal, may be made or executed on behalf of the Service by the Executive Chairman or by any person generally or specifically authorized to act for that purpose by the Board.

13. A document purporting to be a contract, an instrument or other document signed or sealed on behalf of the Service shall be received in evidence and, unless the contrary is proved, be presumed without further proof, to have been properly signed or sealed.

14. The validity of any proceeding of the Board or its committees shall not be affected by-

- (a) any vacancy in the membership of the Board or its committees;
- (b) reason that a person not entitled to do so took part in the proceedings; or
- (c) any defect in the appointment of a member.

15. Any member of the Board or committee who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Board or any committee shall-

- (a) disclose his interest to the Board or committee; and
- (b) not vote on any question relating to the contract or arrangement.

FORM OF AUTHORISATION TO ACCESS LANDS, BUILDINGS, BOOKS AND DOCUMENTS

To.....The Federal Inland Revenue

Service, by virtue of the powers vested in it by section 29 of the Federal Inland Revenue Service Act 2007, hereby authorises you to enter the premises, office, place of management or residence of any person, the principal officer, agent factor or representative or any person who has been suspected by the Service of fraud, evasion, wilful default, etc., in connection with a tax due to government; and whose premises, office, place of management or residence of the principal officer, agent factor or representative is at

..... and

for carrying out your assignment thereof further authorise you, with the aid of any police officer (if necessary), which assistance he is hereby required to give, search and remove (if necessary) such records, books and documents wherever they may be found either in possession of any person in respect of who the tax remains unpaid. And for the purpose of this assignment you are hereby authorised, if necessary, with such assistance as aforesaid to break open any building or place in the daytime.

SIGNED and issued under the hand of the Executive Chairman.....at THIS.....day of.....20.....

..... Executive Chairman

..... Judicial Officer

FORM OF WARRANT OF DISTRAINT

To.....

Name Company.....

Amount of tax to be levied by distress.....

The Federal Inland Revenue Service, in exercise of powers vested in it by section 33 of the Federal Inland Revenue Service Act, 2007, hereby authorizes you to collect and recover the sum of

..... being arrears of tax due for the years of assessment hereinafter mentioned from the above-named company whose place of business is at

..... and for the recovery thereof the said Service further authorizes that you, with the aid (if necessary) of your assistants and calling to your assistance any police officer (if necessary) which assistance he is by Law required to give, do forthwith levy by distraint, the said sum together with the costs and charges of and incidental to the taking and keeping of such distraint, on goods, chattels, land, premises, or other distrainable things of the said company wherever the same may be found and on all goods which you may find in any premises or on any land in the use of or possession of the said company or any other person on its behalf or in trust for the company.

..... and for the recovery thereof the said Service further authorizes that you, with the aid (if necessary) of your assistants and calling to your assistance any police officer (if necessary) which assistance he is by Law required to give, do forthwith levy by distraint, the said sum together with the costs and charges of and incidental to the taking and keeping of such distraint, on goods, chattels, land, premises, or other distrainable things of the said company wherever the same may be found and on all goods which you may find in any premises or on any land in the use of or possession of the said company or any other person on its behalf or in trust for the company.

..... and for the recovery thereof the said Service further authorizes that you, with the aid (if necessary) of your assistants and calling to your assistance any police officer (if necessary) which assistance he is by Law required to give, do forthwith levy by distraint, the said sum together with the costs and charges of and incidental to the taking and keeping of such distraint, on goods, chattels, land, premises, or other distrainable things of the said company wherever the same may be found and on all goods which you may find in any premises or on any land in the use of or possession of the said company or any other person on its behalf or in trust for the company.

And for the purpose of levying such distraint you are hereby authorised, if necessary, with such assistance as aforesaid to break open any building or place in the daytime.

2. The particulars of the said arrears of tax are as follows

Year of Assessment	No. of Notice of Assessment	Amount of Tax
(i)
(ii)
(iii)

SIGNED and issued under the hand of the Executive Chairman of the Federal Inland Revenue

Service at..... this day of..... 20.....

Signature.....

Executive Chairman
Federal Inland Revenue

SCHEDULE

FIFTH SCHEDULE

Sections 59 (1)

ESTABLISHMENT, JURISDICTION, AUTHORITY AND PROCEDURE OF THE TAX APPEAL TRIBUNAL

Establishment of Tax Appeal Tribunals

1.

- (1) Pursuant to section 59 (1) of this Act, there shall be established a Tax Appeal Tribunal (hereinafter referred to as “the tribunal”) to exercise the jurisdiction, powers and authority conferred on it by or under this Schedule.
- (2) The Minister may by notice in the Federal Gazette specify the number of zones, matters and places in relation to which the Tribunal may exercise jurisdiction.

Composition of the Tribunal

2.

- (1) A Tribunal shall consist of five members (hereinafter referred to as “Tax Appeal Commissioners”) to be appointed by the Minister.
- (2) A Chairman for each zone shall be a legal practitioner who has been so qualified to practice for a period of not less than 15 years with cognate experience in tax legislation and tax matters.
- (3) A Chairman shall preside at every sitting of the Tribunal and in his absence the members shall appoint one of them to be the Chairman.
- (4) The quorum at any sitting of the Tribunal shall be three members.

Qualifications for appointment as a Tax Appeal Commissioner

3. A person shall not be qualified for appointment as a Tax Appeal Commissioner unless he is knowledgeable about the laws, regulations, norms, practices and operations of taxation in Nigeria as well as persons that have shown capacity in the management of trade or business or a retired public servant in tax administration.

Term of Office

4. A Tax Appeal Commissioner shall hold office for a term of three years, renewable for another term of three years only and no more, from the date on which he assumes his office or until he attains the age of 70 years whichever is earlier.

Resignation and Removal

5.

- (1) A Tax Appeal Commissioner may by notice in writing under his hand addressed to the Minister resign his office:

Provided that the Tax Appeal Commissioner shall, unless he is permitted by the Minister to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor assumes his office or until the expiry of his term of office, whichever is earlier.

- (2) A Tax Appeal Commissioner may be removed from office by the Minister on the grounds of gross misconduct or incapacity after due inquiry has been made and the Tax Appeal Commissioner concerned has been informed of the reasons for his removal and given an opportunity of being heard in respect of the reasons.

Salary, Allowances and Conditions of Service of Tax Appeal Commissioners

6. The salary and allowances payable to and the terms and conditions of service of the Tax Appeal Commissioners shall be determined by the Revenue Mobilization Allocation and Fiscal Commission and shall be prescribed in their Letters of Appointment:

Provided that neither the salary and allowances nor the other terms and conditions of service of a Tax Appeal Commissioner shall be varied to his disadvantage after appointment.

Filling Up of Vacancies

7. If for reason other than temporary absence, any vacancy occurs in the office of a Tax Appeal Commissioner, then the Minister shall appoint another person in accordance with the provisions of this Act to fill the vacancy.

Order Constituting a Tribunal to be Final

8. The question as to the validity of the appointment of any person as a Tax Appeal Commissioner shall not be the cause of any litigation in any court or tribunal and no act or proceedings before the Tribunal shall be called into question in any manner on the ground merely of any defect in the constitution of the Tribunal.

Secretary to the Tribunal

9.

- (1) The Minister shall appoint for each place or zone where the Tribunal is to exercise jurisdiction a Secretary who shall-
 - (a) subject to the general control of the Tax Appeal Commissioners, be responsible for keeping records of the proceedings of the Tribunal;
 - (b) be the head of the secretariat and responsible for-

- i. the day-to-day administration; and
 - ii. the direction and control of all other employees of the Tribunal
- (2) The official address of the Secretary appointed for each zone shall be published in the Federal Gazette.

Other Staff of the Tribunal, etc.

10.

- (1) The Minister shall appoint such other employees as he may deem necessary for the efficient performance of the functions of the Tribunal and the remuneration of persons so employed shall be determined by the National Salaries and Wages Commission.
- (2) It is declared that employment in the Tribunal shall be subject to the provisions of the Pension Reform Act and, accordingly, officers and employees of the Service shall be entitled to pensions and other retirement benefits as are prescribed under the Pension Reform Act.

Jurisdiction of the Tribunal, etc.

11.

- (1) The Tribunal shall have power to adjudicate on disputes, and controversies arising from the following tax laws (hereinafter referred to as “the tax laws”)-
- i. Companies Income Tax Act, CAP. 60 LFN; 1990.
 - ii. Personal Income Tax Act No. 104, 1993.
 - iii. Petroleum Profits Tax Act CAP. 354 LFN; 1990;
 - iv. Value Added Tax Act No. 102; 1993;
 - v. Capital Gains Tax Act CAP. 42 LFN; 1990, and
 - vi. any other law contained in or specified in the First Schedule to this Act or other laws made or to be made from time to time by the National Assembly.
- (2) The Tribunal shall apply such provisions of the tax laws referred to in subparagraph (1) of this paragraph as may be applicable in the determination or resolution of any dispute or controversy before it.

Criminal Prosecution

12. Where in the course of its adjudication, the Tribunal discovers evidence of possible criminality, the Tribunal shall be obliged to pass such information to the appropriate criminal prosecuting

authorities, such as the office of the Attorney-General of the Federation or the Attorney General of any state of the Federation or any relevant law enforcement agency.

Appeals from Decisions of the Service

13.

- (1) A person aggrieved by an assessment or demand notice made upon him by the Service or aggrieved by any action or decision of the Service under the provisions of the tax laws referred to in paragraph 11, may appeal against such decision or assessment or demand notice within the period stipulated under this Schedule to the Tribunal.
- (2) An appeal under this schedule shall be filed within a period of 30 days from the date on which a copy of the order or decision which is being appealed against is made, or deemed to have been made by the Service and it shall be in such form and be accompanied by such fee as may be prescribed provided that the Tribunal may entertain an appeal after the expiry of the said period of 30 days if it is satisfied that there was sufficient cause for the delay.
- (3) Where a notice of appeal is not given by the appellant as required under subparagraph (1) of this paragraph within the period specified, the assessment or demand notices shall become final and conclusive and the Service may charge interests and penalties in addition to recovering the outstanding tax liabilities which remain unpaid from any person through proceedings at the Tribunal.

Appeals by the Service

14. Service aggrieved by the non-compliance by a person in respect of any provision of the tax laws, it may appeal to the Tribunal where the person is resident giving notice in writing through the Secretary to the appropriate zone of the Tribunal.

Procedure before Tax Appeal Tribunal

15.

- (1) As often as may be necessary, Tax Appeal Commissioners shall meet to hear appeals in the jurisdiction or zone assigned to that Tribunal.
- (2) Where a Tax Appeal Commissioner has a direct or indirect financial interest in any appeal pending before the Tribunal or where the taxpayer is or was a client of that Tax Appeal Commissioner in his professional capacity, he shall declare such interest to the other Tax Appeal Commissioners and refrain from sitting in any meeting for the hearing of that appeal.
- (3) The Secretary to the Tribunal shall give seven clear days notice to the Service and to the appellant of the date and place fixed for the hearing of each Appeal except in respect of any adjourned hearing for which the Tax Appeal Commissioners have fixed a date at their previous hearing.
- (4) All notices, documents, other than decisions of the Tribunal, may be signified under the hand

of the Secretary.

- (5) All appeals before the Tax Appeal Commissioners shall be held in public.
- (6) The onus of proving that the assessment complained of is excessive shall be on the appellant.
- (7) At the hearing of any appeal if the representative of the Service proves to the satisfaction of the Tribunal hearing the appeal in the first instance that-
 - (a) the appellant has for the year of assessment concerned, failed to prepare and deliver to the Service returns required to be furnished under the relevant provisions of the tax laws mentioned in paragraph 11;
 - (b) the appeal is frivolous or vexatious or is an abuse of the appeal process; or
 - (c) it is expedient to require the appellant to pay an amount as security for prosecuting the appeal,

the Tribunal may adjourn the hearing of the appeal to any subsequent day and order the appellant to deposit with the Service, before the day of the adjourned hearing, an amount, on account of the tax charged by the assessment under appeal, equal to the tax charged upon the appellant for the preceding year of assessment or one half of the tax charged by the assessment under appeal, whichever is the lesser plus a sum equal to ten percent of the said deposit, and if the appellant fails to comply with the order, the assessment against which he has appealed shall be confirmed and the appellant shall have no further right of appeal with respect to that assessment.

- (8) The Tribunal may, after giving the parties an opportunity of being heard, confirm, reduce, increase or annul the assessment or make any such order as it deems fit.
- (9) Every decision of the Tribunal shall be recorded in writing by the Chairman and subject to the provisions of paragraph 16, a certified copy of such decision shall be supplied to the appellant or the Service by the Secretary, upon a request made within 30 days of such decision.
- (10) Where upon the hearing of an appeal-
 - (a) no accounts, books or records relating to profits were produced by or on behalf of the appellant;
 - (b) such accounts, books or records were so produced but rejected by the Tribunal on the ground that it had been shown to its satisfaction that they were incomplete or unsatisfactory;
 - (c) the appellant or his representative, at the hearing of the appeal, has neglected or refused to comply with a notice delivered or sent to him by the Secretary to the Tribunal, without showing any reasonable cause; or
 - (d) the appellant or any person employed, whether confidentially or otherwise, by the appellant or his agent (other than his legal practitioner or accountant acting for him in connection

with his ability to tax) has refused to answer any question put to him by the Tribunal, without showing any reasonable cause the Chairman of the Tribunal shall record particulars of the same in his written decision.

Procedure following decision of the Tribunal

16.

- (1) Notice of the amount of the tax chargeable under the assessment as determined by the Tribunal shall be served by the Service upon the taxpayer or upon the person in whose name such taxpayer is chargeable.
- (2) An award or judgement of the Tribunal shall be enforced as if it were a judgement of the Federal High Court upon registration of a copy of such award or judgment with the Chief Registrar of the Federal High Court by the party seeking to enforce the award or judgment.
- (3) Notwithstanding that an appeal is pending, tax shall be paid in accordance with the decision of the Tribunal within one month of notification of the amount of the tax payable in pursuance of subparagraph (1) of this paragraph.

Appeal to the Federal High Court

17.

- (1) Any person dissatisfied with a decision of the Tribunal constituted under this Schedule may appeal against such decision on a point of law to the Federal High Court upon giving notice in writing to the Secretary to the Tribunal within 30 days after the date on which such decision was given.
- (2) A notice of appeal filed pursuant to subparagraph (1) of this paragraph shall set out all the grounds of law on which the appellant's case is based.
- (3) If the Service is dissatisfied with the decision of the Tribunal, it may appeal against such decision to the Federal High Court on points of law by giving notice in writing as specified in subsection (1) of this section to the Secretary within 30 days after the date on which such decision was given.
- (4) Upon receipt of a notice of appeal under subparagraph (1) or (2) of this paragraph, the Secretary to the Tribunal shall cause the notice to be given to the Chief Registrar of the Federal High Court along with all the exhibits tendered at the hearing before the Tribunal.
- (5) The Chief Judge of the Federal High Court may make rules providing for the procedure in respect of appeals made under this Act and until such rules are made, the Federal High Court rules relating to hearing of appeals shall apply to the hearing of an appeal under this Act.

Right to Legal Representation

18.

- (1) A complainant or appellant, as the case may be, may either appear in person or authorize one or more legal practitioners or any of its officers to represent him or its case before the Tribunal.
- (2) Every individual or company in a case before the Tribunal shall be entitled to be represented at the hearing of an appeal by a solicitor or chartered accountant or adviser provided that, if the person appointed by the taxpayer to be representative in any matter before the Tribunal is unable for good cause to attend hearing thereof, the Tribunal may adjourn the hearing for such reasonable time as it deems fit, or admit the appeal to be made by some other person or by way of a written address.

Application of Statute of Limitation

19. The provisions of any statute of limitation shall not apply to any appeal brought before the Tribunal.

Powers and procedures of the Tribunal

20.

- (1) The Tribunal may make rules regulating its procedures.
- (2) The Tribunal shall, for the purposes of discharging its functions under this Schedule, have power to-
 - i. summon and enforce the attendance of any person and examine him on oath;
 - ii. require the discovery and production of documents;
 - iii. receive evidence on affidavits;
 - iv. call for the examination of witnesses or documents;
 - v. review its decisions;
 - vi. dismiss an application for default or deciding matters *ex parte*;
 - vii. set aside any order or dismissal of any application for default or any order passed by it *ex parte*; and
 - viii. do anything which in the opinion of the Tribunal is incidental or ancillary to its functions under this Schedule.
- (3) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding and the Tribunal shall be deemed to be a civil court for all purposes.

Minister to make Rules and Regulations

21. The Minister may make rules prescribing the procedure to be followed in the conduct of appeals before the Tribunal.

Costs

22. Each party to an appeal shall bear its own cost.

Further Appeals

23. An appeal against the decision of the Federal High Court at the instance of either party shall lie to the Court of Appeal.

CHAPTER I4

INCOME TAX (AUTHORISED COMMUNICATIONS) ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Authorised communication as to income tax matters, etc.
2. Powers of the Inspector-General of Police or other designated officer.
3. Application of certain enactments and protection of authorised communication.
4. Offences.
5. Short title, extent and interpretation.

SCHEDULE

CHAPTER I4

INCOME TAX (AUTHORISED COMMUNICATIONS) ACT

An Act to make provision for authorised communications on income tax matters.

[1966 No. 30.]

[Commencement]

23rd April, 1966

1. Authorised communication as to income tax matters, etc.

For the purposes of any investigation or enquiry authorised in any manner whatsoever by the Federal Government

[1966 No. 32.]

- (a) the President may, by an order in writing in Form 1 specified in the Schedule to this Act, authorise the Inspector-General of Police or any other person to inspect, and if necessary remove, any books, records, lists, returns or other documents in the possession or control of the Federal Board of Inland Revenue (in this Act called “the Board”) and to obtain any such other information as the Inspector-General of Police or such other person may require for the purposes of any investigation or enquiry;

[Schedule. Form 1.]

- (b) where an order is made under paragraph (a) of this section, the Board shall permit the Inspector-General of Police or such other person so authorised to make such inspection and remove any documents as he may require, and shall disclose to the person any information or document as may be required for the purposes of the investigation or enquiry, and if required to do so by the Inspector-General of Police or such other person, the Board or any public officer authorised in that behalf by the Board, shall prepare a record of any income tax matter relating to any person over such period as may be required;
- (c) in the application of this section, references to “the Board” include references to any other tax authority from whom the Board is entitled under any enactment to require disclosure or transfer of information or any document or record, and the words “the Board” shall have effect accordingly.

[1966 No. 32.]

2. Power of the Inspector-General of Police or other designated officer

- (1) Where an order is made under section 1 (a) of this Act, the Inspector-General of Police or any person as may be designated in the order may, in writing in Form 2 specified in the Schedule to this Act, direct the chairman of the Board or any public officer of the department responsible for such matters or the custody of the relevant information or document to produce such relevant information or document as may be required and the chairman of the Board or such officer shall comply with such direction within the period specified in the document or as may be agreed upon by the chairman of the Board or such officer and the Inspector-General of Police or the person designated by the order.

[1966 No. 32. Schedule.]

- (2) Where an approval or consent of any person is required to be obtained by virtue of any enactment before any disclosure, transfer, inspection or production of any relevant information or document, such enactment shall not apply in relation to the relevant information or document required to be disclosed, transferred, inspected or produced by virtue of this Act.

3. Application of certain enactments and protection of authorised communication

- (1) Subject to the provisions of this Act, the provisions of the Personal Income Tax Act and the Companies Income Tax Act, shall apply in relation to the information, documents or other records specified in those Acts.

[Cap. P8. Cap. C21.]

- (2) Without prejudice to any other provisions relating to the protection of official information, any person, who-
 - (a) transmits any relevant information or document to a person, other than a person authorised by this Act;
 - (b) obtains, reproduces or retains any relevant information or document, which he is not

authorised so to do in accordance with this Act,

shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding five years.

4. Offences

Any person, who refuses or neglects to comply with any order, direction or requirement contained in any order or in any document authorised by this Act, shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years.

5. Short title, extent and interpretation

- (1) This Act may be cited as the Income Tax (Authorised Communications) Act.
- (2) In this Act, “**the relevant information or document**” means any information, returns, assessment lists or copies thereof as to the personal circumstances of any taxable person or the profit or item of profits of any person, or such other record or document as may be specified in an order to which section 1 of this Act relates.

SCHEDULE

FORM 1

[Section 1 (a).]

Order for inspection and/or removal of books, etc.

(under the Income Tax (Authorised Communications) Act)

To the Inspector-General of Police and all other officers of police of and above the rank of Chief Superintendent.

You and each of you are hereby authorised by the President under the powers conferred by the Income Tax (Authorised Communication) Act, as his delegate to require disclosure of relevant information or any document from the Federal Board of Inland Revenue and any other appropriate authority relating to the affairs of.....

(name of the person affected)

[Cap. 14.]

and if necessary to remove any relevant document, book, record, list or return, relating to the person aforesaid in the possession or control or the Federal Board of Inland Revenue or other appropriate tax authority:

AND for such purposes this order shall be your sufficient authority.

DATED at.....this.....day of.....20.....

(Signature).....

President

FORM 2

[Section 2 (1).]

Direction to produce information and documents

(under the Income Tax (Authorised Communications) Act)

To..... *(here insert name of tax authority according as to whether it is the Federal Board of Inland Revenue or other appropriate tax authority)*

You are hereby directed and required under the provisions of section 2 of the Income Tax (Authorised Communications) Act, to produce on or before the.....day of..... 20.....to any officer of police not below the rank of Chief Superintendent on production of his identity and authority, any information he may require in your possession or control relating to.....

(name of person, etc)

[Cap.14]

and any relevant books records, lists, returns or other document:

AND the receipt therefore by any such officer of police shall be your sufficient acquittance and indemnity.

DATED at..... this..... day of..... 20.....

.....

Inspector-General of Police

CHAPTER I7

INDUSTRIAL DEVELOPMENT (INCOME TAX RELIEF) ACT

ARRANGEMENT OF SECTIONS

Pioneer conditions

SECTION

1. Publication of list of pioneer industries and products and issuing of pioneer certificate.
2. Mode of application for pioneer certificate, etc., and fee payable.
3. Terms of pioneer certificate.
4. Amending of pioneer certificate by adding additional pioneer product.
5. Provisions where pioneer certificate operates retrospectively.
6. Certifying the date of production day and the amount of qualifying capital expenditure. etc.
7. Cancellation of pioneer certificates.
8. Information.
9. Publication of pioneer certificate, etc.

Income tax relief

10. Tax relief period.
11. Provisions governing old and new trade or business.
12. Restrictions on trading prior to end of tax relief period. etc.
13. Power to direct in certain events.
14. Capital allowances and losses.
15. Returns of profits.
16. Profits exempted from income tax.
17. Exemption of certain dividends from income tax.
18. Restrictions on distribution of dividends and on the granting of loans.

19. Exclusion of small companies' relief.

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CHAPTER I7

INDUSTRIAL DEVELOPMENT (INCOME TAX RELIEF) ACT

An Act to repeal and re-enact, with major changes, the Industrial Development (Income Tax Relief) Act and to make provision for tax relief for certain industries that may be issued with pioneer certificates by the Minister and other matters ancillary thereto.

[1971 No. 22.]

[Commencement.] [1st April, 1970]

Pioneer conditions

1. Publication of list of pioneer industries and products and issuing of pioneer certificates

(1) Where the President is satisfied that-

- (a) any industry is not being carried on in Nigeria on a scale suitable to the economic requirements of Nigeria or at all, or there are favourable prospects of further development in Nigeria of any industry; or
- (b) it is expedient in the public interest to encourage the development or establishment of any industry in Nigeria by declaring the industry to be a pioneer industry and any product of the industry to be a pioneer product,

the President may direct publication in the *Gazette* of a list of such industries and products (in this Act referred to as “the list of pioneer industries and pioneer products”) and upon publication as aforesaid, but subject to subsections (5) and (6) of this section, application may at any time thereafter be made under this Act, for the issue of a pioneer certificate to any company in relation to any such pioneer industry or pioneer product, and the President may, in accordance with the provisions of this Act, issue the certificate to the company in any proper case.

- (2) An application may also be made under this section for any industry to be included in the list of pioneer industries and pioneer products.
- (3) Any application under this section may be made by a company incorporated in Nigeria, or by a group of persons on behalf of a company which is to be so incorporated.
- (4) No application for the issue of a pioneer certificate to any company shall be made under this section unless the estimated cost of qualifying capital expenditure to be incurred by the company on or before production day (if the application is approved) is an amount which-
 - (a) in the case of an indigenous-controlled company, is not less than ₦50,000; or
 - (b) in the case of any other company, is not less than ₦150,000.
- (5) The President may from time to time, on any ground which appears to it sufficient, amend the list of pioneer industries and pioneer products.

- (6) Where, in exercise of the powers conferred under subsection (5) of this section. any industry or product is deleted from the list of pioneer industries and pioneer products, then-
- (a) no application under this section shall thereafter be made by any company in relation to that industry or product; and
 - (b) as respects any pending application made under subsection (1) of this section, no pioneer certificate shall be issued under this Act, to any company in relation to that industry or product.
- (7) Any small or medium sized company engaged in primary agricultural production shall be granted, pursuant to an application to the President, through the Minister, an initial tax-free period of four years which may be extended, subject to the satisfactory performance of such primary agricultural production, for an additional maximum period of two years, and such company cannot be granted similar tax holiday incentive under any other Act in force in Nigeria.

[2020 No.1, s. 23]

2. Mode of application for pioneer certificate, etc., and fee payable

- (1) Subject to the provisions of this Act, every application under section 1 of this Act shall be addressed to the Minister and shall be in such form as he may from time to time, specify.
- (2) Every such application shall state the grounds upon which the applicant relies and, if the application is for the issue of a pioneer certificate to any company, the applicant shall-
- (a) state whether the company is, or the proposed company when incorporated shall be, an indigenous-controlled company;
 - (b) give particulars of the assets on which qualifying capital expenditure will be incurred by the company, including their source and estimated cost-
 - (i) on or before production day; and
 - (ii) during a period of three, years following production day;
 - (c) specify the place in which the assets, in respect of which qualifying expenditure will be incurred by the company or proposed company, are to be situated;
 - (d) estimate and state the probable date of production day of the company or proposed company;
 - (e) specify any product and by-product (not being a pioneer product) proposed to be produced by the company or proposed company, and give a reasonable estimate of the quantities and value of such product and by-product during a period of one year from production day;

- (f) give particulars of the loan and share capital, or the proposed loan and share capital of the company, or proposed company, including the amount and date of each issue or proposed issue, and the source from which the capital is to be or has been raised;
 - (g) in the case of a company already incorporated, give the name, address and nationality of each director of the company and the number of shares held by him; and
 - (h) in the case of a proposed company give the name, address and nationality of each promoter of the company.
- (3) Every such application shall contain a declaration signed by the applicant that all the particulars contained in the application are true and an undertaking to produce proof, if required, to the satisfaction of the Minister, of the truth of any such particulars which, under subsection (5) of this section, the Minister may require the applicant to furnish.
 - (4) The application shall be accompanied by a fee of ₦100 (which sum shall not be refundable to the applicant, whether the application is approved or not) and the fee shall be credited to the Consolidated Revenue Fund of the Federation.
 - (5) Where an application is submitted to the Minister under this section, he may require the applicant to furnish such further particulars as the Minister may consider necessary, to enable the President to consider the application.
 - (6) As soon as may be after the application is submitted to the Minister or, as the case may be, after any further particular required by the Minister under subsection (5) of this section has been furnished to him by the applicant, the Minister shall submit the application and, subject to the provisions of this Act, the President may approve or disapprove the application.

3. Terms of pioneer certificate

- (1) Without prejudice to subsection (3) of this section, every pioneer certificate shall be in the terms of the application to which it relates:

Provided that the President may make any variation in any such application.

- (2) A pioneer certificate may specify any permissible by-product which may be produced by the pioneer company in addition to the pioneer product and, if the President thinks fit, the pioneer certificate may limit the proportion of the permissible by-product in relation to the pioneer product, either in quantity or in value or both.
- (3) Where an application for the issue of a pioneer certificate made on behalf of a proposed company is approved by the President, it shall-
 - (a) specify the period within which the company must be incorporated, not being later than four months after the date of notification of the approval to the applicants;
 - (b) specify any other conditions to be endorsed on the pioneer certificate when it is issued.
- (4) Any pioneer certificate to be issued to any company to which subsection (3) of this section

relates shall be issued only after the company has been incorporated and the certificate shall be effective from a date, not earlier than the date on which the application for the pioneer certificate was submitted to the Minister or the date on which the company is so incorporated, whichever is the later, and the President may require that an undertaking shall be given by the company for the purpose of ensuring the due compliance by the company with any conditions endorsed on its pioneer certificate.

- (5) Notice of any condition, specified by the President under subsection (3) of this section, or of any undertaking required under subsection (4) of this section, shall be given by the Minister to the applicants concerned.
- (6) Notwithstanding anything contained in section 10 of this Act, in any case where a pioneer company-
 - (a) has acquired or proposes to acquire assets from any company to which a pioneer certificate has been granted under the Aid to Pioneer Industries Act, the Industrial Development (Income Tax Relief) Act or this Act; or
[1952 No. 10. Cap. 87 of 1958 Edition.]
 - (b) has taken over or proposes to take over the whole assets of any other company which is not a pioneer company,

the pioneer certificate may specify the maximum tax relief period, not exceeding five years, to be enjoyed by the pioneer company.

4. Amending of pioneer certificate by adding additional pioneer product

- (1) At any time during its tax relief period, a pioneer company may make an application in writing to the Minister for its pioneer certificate to be amended by the Council by adding any additional product to the pioneer product or products specified in the certificate.
- (2) Every such application shall specify the additional pioneer product and the reasons for the application and, subject as aforesaid, the provisions of subsections (3), (5) and (6) of section 2 of this Act shall apply in relation to an application made under section I of this Act.
- (3) Where an application under this section is approved by the President (with or without variations), it shall amend the pioneer certificate of the pioneer company in such terms and subject to such conditions as the President may think fit.

5. Provisions where pioneer certificate operates retrospectively

- (1) Subject to the provisions of section 6 of this Act, where a pioneer certificate is to be operative from a retrospective date, then any act or thing which has been done or which has happened for the purposes of the principal Act since that date, but which would not have been done or happened if the pioneer certificate had been in force at that date, shall, whenever necessary for the purposes of this Act and the principal Act, be treated as not having been done or not having happened, and if the act consists of the payment of any tax by a company certified to be a pioneer company, that tax shall, as soon as may be after the expiration of three months from the production day of that company, be repaid to the company by the Board.

6. Certifying the date of production day and the amount of qualifying capital expenditure, etc.

- (1) Not later than one month after the material date, a pioneer company shall make an application in writing to the Director to certify the date of its production day and shall propose a date to be so certified and give reason for proposing that date.
- (2) Not later than one month after the production day of a pioneer company has been finally determined and certified under this section, or within such extended time as the Board may allow, a pioneer company shall make an application in writing to the Board or certify the amount of the qualifying capital expenditure incurred by the pioneer company prior to production day and the company shall supply full particulars of the capital expenditure so incurred.
- (3) In determining the amount of qualifying capital expenditure incurred by a pioneer company prior to its production day, any sum derived directly or indirectly by that company from any disposal (made before that day) of any asset on which qualifying capital expenditure has been incurred shall be taken into account for the purpose of reducing the amount of the qualifying capital expenditure; but where the disposal of such asset is by way of bargain not made at arm's length or is to any person who is controlled by the pioneer company or who has control over the pioneer company, the asset shall be deemed to have been disposed of for an amount, which in the opinion of the Board, the asset would have fetched if sold in the open market at the date of the disposal, less the amount of any expenses which the company might reasonably be expected to incur if the asset were so sold.
- (4) After considering any application made under subsection (1) of this section, together with such further information as he may call for, the Director shall issue a certificate to the pioneer company certifying the date of its production day.
- (5) After considering any application made under subsection (2) of this section, together with such further information as it may call for, the Board shall issue a certificate to the pioneer company certifying the amount of qualifying capital expenditure incurred by the company prior to production day.
- (6) The provisions of Parts IX and X of the principal Act (which relate to objections and appeals) and of any rules made thereunder, shall apply, *mutatis mutandis*, to any certificate issued by the Director or the Board under this section, as if such certificate were a notice of assessment given under the said provisions of the principal Act.
- (7) The Director shall notify the Minister and the Board of the date of the production day of the pioneer company when the same has been finally determined and certified by the Director.
- (8) When the amount of the qualifying capital expenditure incurred by the pioneer company prior to production day has been finally determined and certified by the Board, the Board shall notify the Minister of that amount.
- (9) On the receipt of the notifications mentioned in subsections (7) and (8) of this section, the Minister shall require the pioneer company to declare within a period not exceeding thirty

days in what respects the proposals and estimates made in its application for a pioneer certificate, or any conditions contained in its pioneer certificate, have not been fulfilled.

- (10) Where a certificate issued by the Director under subsection (4) of this section certifies that the date of the production day of a pioneer company is more than one year later than the estimate thereof given in the company's application for a pioneer certificate, the Minister shall report that fact to the President and the President shall cancel the pioneer certificate of that company unless he is satisfied that the delay is due to causes outside the control of the company or to other good and sufficient causes.
- (11) Where a certificate issued by the Board under subsection (5) of this section certifies that the pioneer company has on or before production day incurred qualifying capital expenditure of an amount which-
 - (a) in the case of an indigenous-controlled company, is less than ₦50,000; or
 - (b) in the case of any other company, is less than ₦150,000,

the Commissioner shall report that fact to the President and the President shall cancel the pioneer certificate of the company.

- (12) For the purposes of subsection (1) of this section, "material date" means-
 - (a) in relation to a pioneer company engaged in a pioneer industry consisting of the provision of services, the date on which the company is ready to provide such services on a commercial scale; and
 - (b) in relation to a pioneer company engaged in a manufacturing, processing, mining, agricultural or any other pioneer industry, the date on which the company begins to produce a pioneer product in marketable quantities.

7. Cancellation of pioneer certificates

- (1) The Minister shall cancel a pioneer certificate upon the application of the pioneer company concerned.
- (2) Subject to the provision of this section and without prejudice to section 6 (10) and (11) of this Act, if the Minister is of the opinion that a pioneer company has contravened any provision of this Act or has failed to fulfill any estimate or proposal made in its application for a pioneer certificate or any conditions contained in its pioneer certificate, the Minister shall report the circumstances to the President who may either cancel the pioneer certificate of the company or restrict the tax relief of that company to such period as the President may, notwithstanding the provisions of section 10 of this Act, consider appropriate.
- (3) The effective date of cancellation of a pioneer certificate of a company shall be where the company has been in operation as a pioneer company for a period less than one year after the pioneer date, the pioneer date; and where the company has been in operation as a pioneer company for a period of not less than one year after the pioneer date, the date of the last anniversary of the pioneer date, and in this subsection, "**the pioneer date**" means the date

from which a pioneer certificate takes effect.

- (4) Where the pioneer certificate of a pioneer company is cancelled or the tax relief period of a company is restricted under subsection (2) of this section, the Minister shall give notice of the cancellation (specifying the effective date thereof) or of the restriction, to the pioneer company concerned.

8. Information

- (1) When authorised to do so by the Minister, an officer of the Federal Ministry of Industry not below the rank of assistant secretary may require a pioneer company to give information in sufficient detail to his satisfaction-
 - (a) as to the local production costs and factory prices of the products of the company;
 - (b) in any appropriate case, as to the relative cost (including freight and insurance) of imported products equivalent or similar to the pioneer products produced by the company;
 - (c) as to any other matter which the Minister may, in the case of that company, reasonably require for the purposes of this Act.

9. Publication of pioneer certificate, etc.

- (1) The Minister shall cause to be published in the *Gazette*-
 - (a) the name of any company to which a pioneer certificate has been given and the pioneer industry or pioneer product to which the certificate relates;
 - (b) the name of any company the pioneer certificate of which has been cancelled and the effective date of the cancellation;
 - (c) any restriction of the tax relief period of a pioneer company.
- (2) Subject to the provisions of subsection (1) of this section, the contents of any application made, or of any pioneer certificate given, under this Act with respect to a pioneer company shall not, except at the instance of the company, be published in the *Gazette* or in any other manner.

Income tax relief

10. Tax relief period

- (1) The tax relief period of a pioneer company shall commence on the date of the production day of the company, and subject to sections 3 (6) and of 7 (2) of this Act, the tax relief period shall continue for three years.
- (2) The tax relief period of a pioneer company may at the end of the three years be extended by the President-

- (a) for a period of one year and thereafter for another period of one year commencing from the end of the first period of extension; or
 - (b) for one period of two years.
- (3) The President shall not extend the tax relief period of a pioneer company in exercise of the power conferred under subsection (2) of this section unless the President is satisfied as to-
- a. the rate of expansion, standard of efficiency and the level of development of the company;
 - b. the implementation of any scheme-
 - (i) for the utilisation of local raw materials in the processes of the company; and
 - (ii) for the training and development of Nigerian personnel in the relevant industry;
 - c. the relative importance of the industry in the economy of the country;
 - d. the need for the extension, having regard to the location of the industry; and
 - e. such other relevant matters as may be required.
- (4) A pioneer company wishing to obtain a certificate for the purposes of subsection (2) of this section shall make an application in writing to the Board not later than one month after the expiration of its initial tax relief period of three years or of any extension thereof, and such application shall contain particulars of all capital expenditure incurred by the company by the requisite date which the company claims should be accepted as qualifying capital expenditure.
- (5) The Board shall, after considering any application made under subsection (4) of this section together with such information as it may call for, issue a certificate to the company certifying the amount of the qualifying capital expenditure incurred by the company by the requisite date; and section 6 (3) of this Act shall apply for the purposes of determining the amount of the qualifying capital expenditure incurred by the requisite date as it applies for the purposes of determining the amount of qualifying capital expenditure incurred prior to a production day as if for the reference in that subsection to the words “prior to its production day” there were substituted a reference to the words “by the requisite date”.
- (6) Where the Board is satisfied that a pioneer company has incurred a loss in any accounting period falling within a tax relief period specified in the provisions of subsections (1) and (2) of this section, it shall issue a certificate to the company accordingly.
- (7) The provisions of Parts IX and X of the principal Act (which relate to objections and appeals) and of any rule made thereunder shall apply, *mutatis mutandis*, to any certificate given by the Board under the provisions of this section, or any notice of refusal to give a certificate under this section, as if the certificate or the notice of refusal were a notice of assessment given under the said provisions of the principal Act.

(8) In this section “**the requisite date**” means the date when a tax relief period expires.

11. Provisions governing old and new trade or business

- (1) Where a trade or business of a pioneer company is carried on by the company before and after the end of its tax relief period, then for the purposes of the principal Act and this Act-
 - (a) the trade or business of that company shall be deemed to have permanently ceased at the end of the tax relief period of the pioneer company;
 - (b) in respect of that trade or business, the pioneer company shall be deemed to have set up and commenced a new trade or business on the day next following the end of its tax relief period;
 - (c) the pioneer company shall make up accounts of its old trade or business for the following periods, that is to say-
 - (i) a period not exceeding one year commencing on its production day;
 - (ii) successive periods of one year thereafter; and
 - (iii) a period not exceeding one year ending at the date when its tax relief period (determined under subsections (1) and (2) of section 10 of this Act) ends;
 - (d) in making up the first accounts of its new trade or business, the pioneer company shall take as the opening figure for those accounts. the closing figures in respect of its assets and liabilities as shown in its last accounts in respect or its tax relief period; and its next accounts of its new trade or business shall be made up by reference to the closing figures in the said first accounts and any subsequent accounts shall be similarly made up by reference to the closing figures of the preceding accounts of its new trade or business.

12. Restrictions on trading prior to the end of tax relief period, etc.

- (1) Prior to the expiration of its tax relief period, a pioneer company shall not carry on any trade or business other than a trade or business, the whole of the profits of which are derived from its pioneer enterprise.
- (2) Where, prior to the expiration of its tax relief period, any profit is earned by a pioneer company from any operations or activities whatsoever other than its pioneer enterprise, the profit shall be deemed, for the purposes of the principal Act, to be derived from Nigeria and shall be liable to tax under that Act.

13. Power to direct in certain events

- (1) For the purposes of the principal Act and this Act, the Board may direct that-
 - (a) any sums payable to a pioneer company in any accounting period which, but for the provisions of this Act, might reasonably and properly have been expected to have been

payable in the normal course of business after the end of that period, shall be treated as not having been payable in that period but as having been payable on such date after that period, as the Board thinks fit, and where such date is after the end of the tax relief period of the pioneer company, as having been so payable on that date as a sum payable in respect of its new trade or business; and

- (b) any expense incurred by a pioneer company within one year after the end of its tax relief period which, but for the provisions of this Act, might reasonably and properly have been expected to have been incurred in the normal course of business during its tax relief period, shall be treated as not having been incurred within that year, but as having been incurred for the purposes of its old trade or business and on such date during its tax relief period, as the Board thinks fit.
- (2) Where a direction has been given under this section with respect to a pioneer company and thereafter the length of the tax relief period of the pioneer company is varied under any of the provisions of this Act, the Board may amend that direction accordingly.
 - (3) In determining whether a loss has been made in an accounting period for the purpose of section 10 (6) of this Act, and for that purpose only, the Board may in its absolute discretion exclude such sum as may be in excess of an amount appearing to the Board to be just and reasonably paid or payable by a pioneer company in respect of-
 - (a) remuneration to directors of the company;
 - (b) interest, service, agency or other similar charges made by a person who is a shareholder of the company or by a person controlled by such shareholder.

14. Capital allowances and losses

- (1) The profits of a pioneer company in respect of its old trade or business falling to be ascertained in accordance with the provisions of the principal Act for any accounting period shall be so ascertained, after making any necessary adjustments in consequence of a direction under section 13 of this Act, without any regard to the provisions of sections 20 and 2 J of the principal Act.
- (2) Where any asset is used for the purposes of the new trade or business of a pioneer company, any capital expenditure incurred by the pioneer company in respect of that asset before the end of its tax relief period shall, for the purposes of the Second Schedule to the principal Act, be deemed to have been incurred on the day next following the end of its tax relief period.
- (3) Where a pioneer company incurs a net loss during an accounting period in its old trade or business, that loss shall be deemed for the purposes of computing total profits (but not profits) to have been incurred by the company on the day on which its new trade or business commences.
- (4) For each accounting period, the Board shall issue to the pioneer company a statement showing the amount of income ascertained under subsection (1) of this section or loss computed in accordance with subsection (3) thereof; and the provisions of Parts IX and X of the principal

Act (which relate to objections and appeals) and of any rules made thereunder shall apply, *mutatis mutandis*, to the statement as if such statement were a notice of assessment given under the said provisions of the principal Act.

- (5) For the purposes of subsection (3) of this section, “net loss” means the aggregate of losses incurred during the tax relief period after deduction of profits, if any, made at any time during that period; and a loss shall be computed in the same manner as profits are computed under the provisions of subsection (1) of this section and without regard to the provisions of section 13 (3) of this Act.

15. Returns of profits

The provisions of Part VIII of the principal Act shall apply in all respects to the profits of a pioneer company from its old trade or business as if those profits were chargeable to tax under that Act.

16. Profits exempted from income tax

- (1) Subject to the provisions of subsection (2) of this section and section 17 (()) of this Act, where in the application of Parts IX and X of the principal Act. a statement issued under section 14 (4) of this Act has become final and conclusive, any profits shown by that statement shall not form part of the assessable profits or total profits of the pioneer company for any year of assessment and shall be exempt from tax under the principal Act.
- (2) The Board may, in relation to any statement issued under section 14 (4) of this Act, declare that the whole or a specified part of the profits is not in dispute, and any such undisputed profits shall be exempt from tax under the principal Act pending the statement becoming final and conclusive.

17. Exemption of certain dividends from income tax

- (1) Wherever any amount of profits of a pioneer company is exempt from tax under section 16 of this Act, that amount shall immediately be credited by the pioneer company to an account to be kept by it for the purposes of this section.
- (2) Where at the date of payment of any dividends by the pioneer company the said account is in credit, the dividends, or so much of the dividends where (after the end of its tax relief period) the amount thereof exceeds such credit, as equal the amount of such credit, shall be debited to the account.
- (3) So much of the amount of any dividends so debited to the account as are received by a shareholder in the pioneer company shall, if the Board is satisfied with the entries in the account, be exempt from tax in the hands of that shareholder and shall for the purposes of the principal Act and the Personal Income Tax Act, be deemed to be paid out of profits on which tax is not paid or payable.

[Cap. P8.]

- (4) Any dividends so debited to the account shall be treated as having been distributed to the shareholders or any particular class of shareholders of the pioneer company, in the same proportions as those shareholders were entitled to payment of the dividends giving rise to the debit.
- (5) Whenever called upon so to do by notice in writing sent by the Board to the registered office of a pioneer company, the company shall, until such time as the Board is satisfied that there is no further need for maintaining the account, deliver to the Board a copy of the account made up to a date specified by the Board in the notice.
- (6) Notwithstanding the provisions of section 16 of this Act and of this section, where it disappears to the relevant tax authority that any amount of exempted profits of a pioneer company, or any dividend exempted in the hands of a shareholder, ought not to have been exempted by reason of-
- (a) a direction under section 13 of this Act having been made with respect to a pioneer company, after any profit of that company has been exempted under the provisions of section 16 of this Act; or
- (b) the cancellation of a pioneer certificate,
- the relevant tax authority may at any time within six years of the direction or cancellation make such additional assessment upon the pioneer company or shareholder as may appear to the relevant tax authority necessary in order to counteract any benefit obtained from the amount which ought not to have been exempted.
- (7) For the purposes of subsection (6) of this section, “**relevant tax authority**” has the same meaning as in section 2 of the Personal Income Tax Act, and in relation to any additional assessment to be made on a company under the said subsection (6), it means the Board.

[Cap. P8.]

18. Restrictions on distribution of dividends and on the granting of loans

During its tax relief period, a pioneer company shall not-

- (a) make any distribution to its shareholders, by way of dividend or bonus, in excess of the amount by which the account, to be kept by the company under section 7 of this Act, is in credit at the date of any such distribution; or
- (b) grant any loan without first obtaining the consent of the Minister, whose consent shall only be given if he is satisfied that the pioneer company is obtaining adequate security and a reasonable rate of interest for any such loan.

19. Exclusion of small companies' relief

A pioneer company shall not be entitled to any relief under section 28 of the principal Act.

20. Provisions for plantation industry

For the purposes of the principal Act and this Act, the trade of a company which operates a plantation and to which a pioneer certificate has been granted shall be deemed to have commenced on the date when planting first reaches maturity, and any expenditure incurred on the maintenance of a planted area up to that date shall be deemed to have brought into existence an asset, and the expenditure shall be qualifying plantation expenditure for the purposes of the Second Schedule to the principal Act.

Miscellaneous and general

21. False information

- (1) Any person who, for the purpose of obtaining a pioneer certificate or of complying with any provisions of this Act-
- (a) makes or presents any declaration or statement which is false in any material particular; or
 - (b) produces any invoice or undertaking which is false in any material particular or has not been given by the person by whom it purports to have been given or which has been in any way altered or tampered with,
- shall be guilty of an offence under this section unless he proves that he has taken all reasonable steps to ascertain the truth of the statement made or contained in any document so presented or produced or to satisfy himself to the genuineness of the invoice or undertaking.
- (2) Any person who is guilty of an offence under this section shall be liable on conviction to a fine not exceeding ₦1,000 or to imprisonment for a term of five years or to both such fine and imprisonment.

22. Offences by body corporate, etc.

Where an offence under this Act is committed by a body corporate, or firm or other association of individuals-

- (a) every director, manager, secretary or other similar officer of the body corporate;
- (b) every partner or officer of the firm;
- (c) every person concerned in the management of the affairs of the association; or
- (d) every person who was purporting to act in any such capacity as aforesaid,

shall severally be guilty of that offence and liable to be prosecuted and punished for the offence in like manner as if he had himself committed the offence, unless the act or omission constituting the offence took place without his knowledge, consent or connivance.

23. Liability under undertaking enforceable notwithstanding proceedings

The institution of proceedings for, or imposition of a fine or term of imprisonment under this Act shall not relieve any person from liability to payment of any sum for which he is or may be liable under any undertaking given by him under any provision of this Act.

24. Repeal, savings and transitional provisions

- (1) Subject to the provisions of this section, the industrial Development (Income Tax Relief) Act is hereby repealed.

[Cap. 87 of the 1958 Edition]

- (2) Subject as aforesaid, and notwithstanding the provisions of section 6 of the Interpretation Act (which relates to the effect of repeals) any pioneer certificate given under the Industrial Development (Income Tax Relief) Act (hereafter in this section referred to as “the repealed Act”) by which an industry was declared to be pioneer industry or a company was declared to be a pioneer company (being a certificate which was in force immediately before the relevant date), shall from that date have effect as if it were a pioneer certificate issued under this Act.

[Cap. 123.]

- (3) Where any part of an initial tax relief period of two years granted to a company before the relevant date under the repealed Act has not expired at the relevant date and the qualifying capital expenditure incurred by the company concerned on or before its production day is:
 - (a) in the case of an indigenous-controlled company, not less than ₦50,000; or
 - (b) in the case of any other company, not less than ₦150,000,

the initial tax relief period shall be construed as if that period were three years instead of two years; and thereafter an application may be made by the company for an extension of the tax relief period under section 10 (2) of this Act.

- (4) Where, in any case other than a case mentioned in subsection (3) of this section, a pioneer certificate granted under the repealed Act to any company is in force immediately before the relevant date, the company may, on or before the expiry date of its pioneer certificate or tax relief period, apply under the provisions of section 10 (2) of this Act, for an extension of its tax relief period; and the provisions of section 1 (4) of this Act shall apply in relation to any application under section 1 of this Act, for the issue of a pioneer certificate.
- (5) A further tax relief period may be granted under section 10 (2) of this Act, to a pioneer company to which subsection (3) or (4) of this section applies, but nothing in this section shall have effect or be construed so as to authorise the grant, in any such case, of a tax relief period (under the repealed Act and this Act) in excess of five years from the production date of the pioneer company.
- (6) Notwithstanding anything in this section, the President may amend or cancel any pioneer certificate to which subsection (2), (3), (4) or (5) of this section applies.

- (7) Where an application for a pioneer certificate made under the repealed Act is pending on the relevant date, the provisions of section 2 of this Act shall apply thereto as if the application had been made under this Act, and the Minister may-
- (a) require the applicant to furnish any particulars, or enter into any undertaking, which if the application had been made under this Act, would have been required to be included in the application or to be given in respect thereto;
 - (b) require the applicant to pay the fee prescribed under the said section 2, before the application is proceeded with under this Act.
- (8) Where an application for a pioneer certificate made under the repealed Act has been approved by the President. but no pioneer certificate had been issued in respect thereof, any certificate issued thereafter shall be deemed to have been in force immediately before the relevant date and effect shall be given thereto as if it were a pioneer certificate issued under that Act.

[1972 No. 42.]

- (9) In this section "relevant date" means the date of the making of this Act.

25. Interpretation

- (1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say-

“accounting period” means a period for which accounts have been made up in accordance with paragraph (c) of section 11 of this Act;

“Board” means the Federal Board of Inland Revenue established under section 1 of the principal Act;

“company” means a company (other than a private company) limited by shares and incorporated and registered in Nigeria and resident in Nigeria;

“the Director” means the director appointed pursuant to section 1 (3) of the Industrial Inspectorate Act;

[Cap.I8.]

“Gazette” means the Federal Gazette and includes the Gazette of any State in the Federation;

“medium sized company” means a company that earns gross turnover greater than ₦25,000,000 but less than ₦100,000,000 per annum, or as otherwise defined by the Companies Income Tax Act;

[2020 No. 1, s. 24]

“the Minister” means the Minister for Industry;

“new trade or business” means the trade or business of a pioneer company deemed under the provisions of section 11 of this Act to have been set up and commenced on the day following the end of its tax relief period;

“old trade or business” means the trade or business of a pioneer company carried on by it during its tax relief period in accordance with the provisions of section 11 of this Act and which either ceases within that period or is deemed, under those provisions, to cease at the end of that period;

“permissible by-product” means any goods or services so described in any certificate given under section 1 of this Act being goods or services necessarily or ordinarily produced in the course of producing a pioneer product;

“pioneer certificate” means a certificate given under this Act certifying, among other things, a company to be a pioneer company, or any such certificate as amended under this Act;

“pioneer company” means a company certified by any pioneer certificate to be a pioneer company;

“pioneer enterprise” in relation to a pioneer company, means the production and sale of its relevant pioneer product or products;

“pioneer industry” means any trade or business of the kind included in any list published under section 1 of this Act;

“pioneer product” means goods or service of the kind included in any list published under section 1 of this Act;

“primary agricultural production” means-

- (a) primary crop production comprising the production of raw and semi-processed crops of all kinds, but excluding any intermediate or final processing of crops or any other associated manufactured or derivative crop product;
- (b) primary livestock production comprising the production of live animals and their direct produce such as live or raw meat, live or raw poultry, fresh eggs and milk of all kinds, but excluding any other associated manufactured or derivative livestock product;
- (c) primary forestry production comprising the production of timbers of various kinds such as firewood, charcoal, uncultivated materials gathered and other forestry products of all kinds, including seeds and saplings, but excluding the intermediate and final processing of timber and any other manufactured or derivative timber product; and
- (d) primary fishing production comprising the production of fish of all kinds, including ornamental fish, but excluding any intermediate or final processing of any other manufactured or derivative fish product.

[2020 No. 1, s. 24]

“principal Act” means the Companies Income Tax Act;
[Cap. C2I.]

“production day” means the day on which the trade or business of a pioneer company commences for the purposes of the principal Act;

“qualifying capital expenditure” means capital expenditure of such a nature as to rank as qualifying expenditure for the purposes of the Second Schedule to the principal Act;

“relevant pioneer product” in relation to any pioneer company, means the pioneer product or products and the permissible by-products specified in its pioneer certificate; and

“small sized company” means a company that earns gross turnover of ₦25,000,000 or less per annum, or as otherwise defined by the Companies Income Tax Act.”

[2020 No. 1, s. 24]

“tax relief period” means the period specified under subsection (1) of section 10 of this Act and any extension of that period made under that section.

(2) References in this Act to an indigenous-controlled company are references to any company in which-

(a) the beneficial ownership of the whole of the equity capital of the company and of all other class of shares conferring voting rights in the company, is vested in persons who are citizens of Nigeria, otherwise than by naturalisation or registration; and

(b) the persons mentioned in paragraph (a) of this subsection, control the composition of the board of directors of the company.

(3) Nothing in this Act shall be taken as prejudicing the effect of section 3 of the Industrial Inspectorate Act (which relates to notice of intention to incur capital expenditure) or any other provision of that Act.

[Cap.18.]

26.Short title

This Act may be cited as the Industrial Development (Income Tax Relief) Act and shall be read as one with the principal Act.

CHAPTER 18

INDUSTRIAL INSPECTORATE ACT ARRANGEMENT OF SECTIONS

SECTION

1. Establishment and composition of Industrial Inspectorate Division.
2. Duties of the division.
3. Notice of intention to incur capital expenditure, etc.
4. Arbitration.
5. Certificate of acceptance or decision of arbitration to be binding.
6. Returns.
7. Offences relating to returns.
8. Power to enter business premises and obtain information, etc.
9. Offences by bodies corporate.
10. Regulations.
11. Interpretation.
12. Short title.

SCHEDULE

FIRST SCHEDULE

FORM I

Notification of intention to incur capital expenditure

FORM II

Certificate of acceptance

SECOND SCHEDULE

Matters about which a person may be required to submit returns under section 6

CHAPTER I 8

INDUSTRIAL INSPECTORATE ACT

An Act to establish the Industrial Inspectorate Division in the Federal Ministry of Industries for the purpose of investigating and following the undertakings of industries including investments and other related matters.

[Commencement] [9th October, 1970]

1. Establishment and composition of Industrial Inspectorate Division

- (1) There shall be established as an integral part of the Federal Ministry of Industries a division to be known as the Industrial Inspectorate Division (hereafter in this Act referred to as "the division") which shall, subject to the overall control and direction of the Minister, have the powers and exercise the functions conferred by or under this Act.
- (2) The division shall consist of a Director and such number of inspectors as may, from time to time, be required to assist the Director.
- (3) The Director and inspectors shall be members of the public service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria 1999.
[Cap. C23.]
- (4) Any person who may be appointed as a Director or inspector shall have such qualifications and experience as are appropriate for a person required to perform the functions conferred by or under this Act.

2. Duties of the Division

- (1) It shall be the duty of the division generally to carry out investigations into any proposed, new and existing undertaking involving any proposed capital expenditure, and in particular, for the purposes of determining the investment valuation of the undertaking, that is-
 - (a) the actual capital (whether foreign or local) employed or proposed to be employed in the undertaking;
 - (b) the actual valuation of buildings, plants and other machinery employed or proposed to be employed in the undertaking and any addition thereto.
- (2) The division shall also obtain necessary information on economic trends in the country and for this purpose the division shall-
 - (a) prepare and keep detailed records of matters relating to any undertaking investigated by it;
 - (b) as far as possible prepare and keep records of all industrial plants and equipment in the country, their value and the value of similar plants and equipment in other countries.

3. Notice of intention to incur capital expenditure, etc.

(1) As from the commencement of this Act, any person proposing-

- (a) to start a new undertaking involving the expenditure of not less than twenty thousand naira; or
- (b) to incur additional capital expenditure of not less than twenty thousand naira in respect of an existing undertaking,

shall give to the Director notice of his intention in the form specified in the First Schedule to this Act.

[First Schedule]

(2) The Director shall on receipt of the notice sent pursuant to subsection (1) of this section verify the information contained therein and may-

- (a) demand and make use of any document relating to the purchase (whether locally or abroad) of any plant or machinery or parts thereof;
- (b) in the case of second-hand equipment, demand and make use of information relating to the history of the equipment;
- (c) carry out physical checks on the site of any undertaking and inspect any building, plant or machinery.

(3) On being satisfied with the investment valuation as determined pursuant to the provisions of sections 1, 2 and 3 to this Act, the Director shall prepare and forward to the person carrying on the undertaking a certificate of acceptance which shall be in the form specified in the First Schedule to this Act.

[First Schedule]

(4) Any person who fails to comply with subsection (1) of this section shall, unless he proves that he had reasonable excuse for the failure, be guilty of an offence and liable on conviction to a fine of one thousand naira.

4. Arbitration

(1) Any person disputing a finding of the Director relative to the investment valuation of any matter concerning his undertaking may require the matter to be submitted to arbitration and the dispute shall be resolved in the following manner, that is to say-

- (a) there shall be a sole arbitrator who shall be a person agreed to by the Director and the party disputing the valuation (both of whom are hereafter in this section referred to as “the affected parties”) and who shall be appointed by the Minister;
- (b) the sole arbitrator shall as soon as possible after his appointment view the building, plant or machinery which is the subject matter of the dispute and consider all documents and

other information relating to them;

- (c) the sole arbitrator shall decide on the investment valuation and make his award within one month after entering on the reference or any longer period allowed in writing by the Minister; and
 - (d) if there shall arise any question of law in the course of determining the dispute, the sole arbitrator may submit the question for the determination of a High Court of a State or of the Federal Capital Territory, Abuja where the undertaking is situated or in which the subject matter of the dispute arises (whichever is in the opinion of the arbitrator convenient to the affected parties) and the arbitrator shall be guided by the decision and direction of the court.
- (2) The investment valuation as determined by the sole arbitrator and any award made thereby shall be binding and final as between the affected parties.
 - (3) Each of the affected parties shall bear his costs incurred in respect of any submission under this section to arbitration, for the determination of a point of law, or both as the case may be.
 - (4) The Arbitration and Conciliation Act shall extend to a submission to arbitration under subsection (1) of this section.

[Cap. A18.]

5. Certificate of acceptance or decision of arbitration to be binding

- (1) Where, in exercise of any of the functions conferred by or under any law, any of the bodies mentioned in subsection (2) of this section has to take account of any fact and-
 - (a) there is included in a certificate of acceptance, issued by the Director pursuant to section 3 (3) of this Act, a finding regarding that fact; or
 - (b) there is, following any reference under section 4 of this Act, an arbitration decision in relation to that fact,

that finding, or as the case may be, the decision, shall for the purposes of the exercise of those functions be final and binding as between any of those bodies and the parties concerned.

- (2) The bodies referred to in subsection (1) of this section are-
 - (a) the Federal Board of Inland Revenue;
 - (b) the Customs, Immigration and Prisons Services Board; and
 - (c) any department of the Government of the Federation or of a State.

6. Returns

- (1) The Director may, by notice in writing served on any person carrying on an undertaking require that person to furnish in such form as may be prescribed information on such of the

matters set out in the Second Schedule to this Act (hereinafter in this Act referred to as “the returns”) as the Director may specify.

[Second Schedule]

- (2) A person required to furnish returns pursuant to subsection (1) of this section, shall, within two months of the date of the notice from the Director, comply with the notice.

7. Offences relating to returns

- (1) If any person required to furnish returns pursuant to section 6 of this Act fails to furnish those returns as required under this Act, he shall be guilty of an offence and liable on conviction to a fine of two hundred naira or in the case of a second or subsequent offence to a fine of four hundred naira.
- (2) If a person, in purported compliance with a requirement to furnish returns as specified in subsection (1) of this section, knowingly or recklessly makes any statement in the returns which is false in any material particular, he shall be guilty of an offence and liable on conviction to a fine of four hundred naira or imprisonment for a term of two years or to both such fine and imprisonment.

8. Power to enter business premises and obtain information, etc.

For the purpose of carrying out any of his functions under this Act the Director or any inspector authorised by him in writing-

- (a) shall have a right of access at all times to any building where an undertaking is being carried on; and
- (b) shall be entitled to require from the directors or other officers of the undertaking such information and explanation as may be required for the performance of any duty conferred under this Act.

9. Offences by bodies corporate

Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other official of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

10. Regulations

The Minister may, make such regulations as may be required from time to time, for carrying into effect the object of this Act and, without prejudice to the foregoing, he may by regulations-

- (a) prescribe anything required to be prescribed under this Act; and
- (b) amend, alter or vary any of the forms contained in the First Schedule to this Act.

11. Interpretation

In this Act, except where the context otherwise requires-

“**Director**” means the Director appointed pursuant to section 1 (3) of this Act;

“**inspector**” means the inspector appointed pursuant to section 1 (3) of this Act;

“**investment valuation**” in relation to any capital investment means any valuation determined pursuant to section 2 of this Act;

“**Minister**” means the Minister of Industries;

“**returns**” has the meaning assigned thereto in section 6 of this Act;

“**undertaking**” means any undertaking carried on by way of trade or business for the production of goods or services for sale and requiring the use of industrial machinery and other equipment, plants, buildings and other permanent or temporary fixtures on land.

12. Short title

This Act may be cited as the Industrial Inspectorate Act.

SCHEDULES

FIRST SCHEDULE

[Section 3]

FORM I

INDUSTRIAL INSPECTORATE ACT

Notification of intention to incur capital expenditure

In accordance with the Industrial Inspectorate Act, I hereby supply the following particulars:

1. Name of business/company.....

2. Address and location.....

3. Postal address.....

4. Description of business.....

5. Cause for capital expenditure:

(Is it a new business about to be established or an existing business expanding)

.....
.....

6. Total new/additional investment envisaged:

.....
.....

7. Programme-

(a) date building is to commence.....

(b) date building is to end.....

(c) date of importation of machinery.....

(d) date machine installation is to commence

(e) date machine installation is to end.....

(f) date production is to start

8. Persons to be contacted at every stage

(a) name.....

(b) address.....

(c) telephone no.....

(d) Signature.....

FORM II

INDUSTRIAL INSPECTORATE DIVISION

FEDERAL MINISTRY OF INDUSTRIES

Industrial Inspectorate Act

CERTIFICATE OF ACCEPTANCE OF NEW/ADDITIONAL* INVESTMENT VALUE

No. of certificate:

Date of issue:

I hereby certify that the value of new/additional* capital expenditure on fixed assets incurred by

Name of business/company.....

Address and location is as follows.....

.....

.....

Building and site development.....

Production machines and equipment.....

Installation.....

Vehicles, etc.....

TOTAL

and that the contribution for financing the above are Nigerian equity.....

Foreign equity

*Cancel whichever is not applicable.

In cases of expansion only (cancel if not applicable).

SECOND SCHEDULE

[Section 6.]

Matters about which a person may be required to submit returns under section 6

1. The nature of the undertaking (including its association with other undertakings), the date of its establishment or acquisition, the output, sales, deliveries and services provided.
2. The articles acquired or used, orders, stocks and work in progress.
3. The persons employed or normally employed (including working proprietors), the nature of their employment, their remuneration and the hours worked.
4. The outgoings and costs (including work given out to contractors, depreciation, rent, rates and taxes, other than taxes on profits) and capital expenditure.
5. The receipts of and debts owed to the undertaking.
6. The power used or generated.
7. The fixed capital assets, the plant, including the acquisition and disposal of those assets and that plant, and the premises occupied.

Local loans.....

Foreign loans.....

Previous investment up to

Acceptance Reference.....

was

Total investments to date.....

CHAPTER N156

NATIONAL INFORMATION TECHNOLOGY DEVELOPMENT AGENCY ACT ARRANGEMENT OF SECTIONS

PART I

Establishment of the Agency

SECTION

1. Establishment of the Agency.

PART II

Composition of the Governing Board, Powers and Functions

2. Establishment and membership of the Governing Board.
3. Tenure of Office.
4. Cessation of membership.
5. Emoluments, etc. of members.
6. Functions of the Agency.
7. Powers of the Board.

PART III

Staff and Structure of the Agency

8. Director-General, Secretary and other staff of the Agency.
9. Pensions Reform Act 2004 No.4.
10. Staff regulations.
11. Removal from Office of the Director-General, etc.

PART IV

Establishment of the National Information Technology Development Fund

12. Establishment, etc., of the National Information Technology Development Fund.
13. Exempted from tax.
14. Investments.
15. Accounts and report of the fund.
16. Federal Inland Revenue Service to collect levy and pay into the Fund.
17. Offences.
18. Offences relating to body corporate.

PART V

Information Technology Parks

19. Information technology parks.

PART VI

Financial Provisions

20. Accounts of the Agency.
21. Expenditure of the Board.
22. Annual estimates and accounts.
23. Annual reports.
24. Power to accept gifts.
25. Power to borrow.
26. Exemption from tax.

PART VII

Legal Proceedings

27. Limitation of suits against the Agency.
28. Service of documents.
29. Restriction on execution against property of the Agency.
30. Indemnity.

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Miscellaneous

31. Directives by the Minister, etc.
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34. Interpretation.
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SCHEDULES

FIRST SCHEDULE

Supplementary Provisions relating to the Board, etc.

SECOND SCHEDULE

Supplementary Provisions relating to the Supervision of the Management of the Country

Code Top Level Domain (.ng) on the Internet

THIRD SCHEDULE

CHAPTER N156

NATIONAL INFORMATION TECHNOLOGY DEVELOPMENT AGENCY ACT

An Act to provide for the establishment of the National Information Technology Development Agency; and for related matters.

[2007 No. 60.]

[24th April, 2007]

[Commencement]

ENACTED by the National Assembly of the Federal Republic of Nigeria.

PART I

Establishment of the Agency

1. Establishment of the Agency

- (1) There is established a body to be known as the National Information Technology Development Agency (hereinafter in this Act referred to as “the Agency”).
- (2) The Agency shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

PART II

Composition of the Governing Board, Powers and Functions

2. Establishment and membership of the Governing Board

- (1) There is established for the Agency, a Governing Board (in this Act, referred to as “the Board”) which shall have overall control of the Agency.
- (2) The Board shall consist of-
 - (a) a chairman;
 - (b) a representative each of:
 - (i) the Federal Ministry of Science and Technology;
 - (ii) the Ministry of Communication;
 - (iii) the Federal Ministry of Education;
 - (iv) the Standards Organisation of Nigeria;
 - (v) the Nigerian Society of Engineers;

- (c) four persons to represent the affiliate bodies of the Computer Professionals' Registration Council of Nigeria;
 - (d) two persons with cognate experience in Information Technology to represent the Academic Staff Union of Universities, and the Academic Staff Union of Polytechnics;
 - (e) six persons who are experts in the area of Information Technology appointed by the President from each of the six geo-political zones of Nigeria; and
 - (f) the Director-General of the Agency who shall be the Secretary of the Board;
 - (g) the Director-General of the Agency who shall be the Secretary of the Board.
- (3) The Chairman and members of the Board, other than the ex officio members, shall be appointed by the President, on the recommendation of the Minister.
- (4) (The supplementary provisions set out in the First Schedule to this Act shall have effect with respect to the proceedings of the Board and the other matters mentioned therein.
[First Schedule])

3. Tenure of Office

The Chairman and other members of the Board, other than ex officio members shall each hold Office-

- (a) for a term of 4 years in the first instance and may be re-appointed for a further term of 4 years and no more; and
- (b) on such terms and conditions as may be specified in his letter of appointment.

4. Cessation of membership

- (1) Notwithstanding the provisions of section 3 of this Act, a member of the Board shall cease to hold Office if:
- (a) he resigns his appointment as a member of the Board by notice, under his hand, addressed to the President;
 - (b) he becomes of unsound mind;
 - (c) becomes bankrupt or makes a compromise with his creditors;
 - (d) he is convicted of a felony or of any offence involving dishonesty or corruption;
 - (e) he becomes incapable of carrying out the functions of his office either arising from an infirmity of the mind or of the body; or
 - (f) the President is satisfied that it is not in the interest of the Agency or of the public for the

person to continue in Office and notifies the member in writing to that effect.

- (2) When a vacancy occurs in the membership of the Board, it shall be filled by the appointment of a successor to hold Office for the remainder of the term of Office of his predecessor provided that the successor shall represent the same interest as his predecessor.

5. Emoluments, etc. of members

The Chairman and members of the Board shall be paid such emoluments, allowances and benefits as the Federal Government may, from time to time, direct.

6. Functions of the Agency

The Agency shall-

- (a) create a framework for the planning, research, development, standardisation, application, co-ordination, monitoring, evaluation and regulation of information technology practices, activities and systems in Nigeria and all matters related thereto and for that purpose, and which without detracting from, the generality of the foregoing shall include providing universal access for information technology and systems penetration including rural, urban and underserved areas;
- (b) provide guidelines to facilitate the establishment and maintenance of appropriate infrastructure for information technology and systems application and development in Nigeria for public and private sectors, urban-rural development, the economy and the Government;
- (c) develop guidelines for electronic governance and monitor the use of electronic data interchange and other forms of electronic communication transactions as an alternative to paper-based methods in Government, commerce, education, the private and public sectors, labour, and other fields, where the use of electronic communication may improve the exchange of data and information;
- (d) develop guidelines for the networking of public and private sector establishments;
- (e) develop guidelines for the standardisation and certification of Information technology Escrow Source Code and Object Code Domiciliation, Application and Delivery Systems in Nigeria;
- (f) render advisory services in all information technology matters to the public and private sectors;
- (g) create incentives to promote the information technology in all spheres of life in Nigeria including the setting up of information technology parks;
- (h) create incentives to promote the use of information technology in all spheres of life in Nigeria including the development of guidelines for setting up of information technology systems and knowledge parks;

- (i) introduce appropriate regulatory policies and incentives to encourage private sector investment in the information technology industry;
- (j) collaborate with any Local or State Government, company, firm or person in any activity which in the opinion of the Agency is intended to facilitate the attainment of the objectives of this Act;
- (k) determine critical areas in information technology requiring research intervention and facilitate research and development in those areas;
- (l) advise the Government on ways of promoting the development of information technology in Nigeria including introducing appropriate information technology legislations, to enhance national security and the vibrancy of the industry;
- (m) accelerate internet and intranet penetration in Nigeria and promote sound internet governance by giving effect to the Second Schedule of this Act; and
[Second Schedule]
- (n) perform such other duties which, in the opinion of the Agency, are necessary or expedient to ensure the efficient performance of the functions of the Agency under this Act.

7. Powers of the Board

The Board shall have power to-

- (a) formulate overall policy for the management of the affairs of the Agency;
- (b) manage the National Information Technology Development Fund established under section 12 of this Act; and
- (c) appoint, promote, terminate, dismiss and exercise disciplinary control over the principal officers and senior staff of the Agency;
- (d) structure the Agency into such number of departments as it deems fit for the effective discharge of the functions of the Agency; and
- (e) exercise such powers as are necessary or expedient for giving effect to the provisions of this Act.

PART III

Staff and Structure of the Agency

8. Director-General and other staff of the Agency

- (1) There shall be for the Agency a Director-General who shall-

- (a) be appointed by the President;
 - (b) be the chief executive and accounting officer of the Agency;
 - (c) be responsible for the execution of policy and the day-to-day administration of the affairs of the Agency; and
 - (d) perform such other duties as the Board may, from time to time, assign to him.
- (2) The Director-General shall hold office for a term of 4, years in the first instance and may be re-appointed for a further term of 4 years and no more and on such terms and conditions as may be specified in his letter of appointment.
 - (3) The Agency may, subject to the approval of the Board, appoint such other staff as it may deem necessary and expedient, from time to time, for the proper and efficient performance of the functions of the Agency.
 - (4) The terms and conditions of service including remuneration, allowances, benefits and pensions of the staff and employees of the Agency shall be determined by the Board in such a manner as to attract and retain quality and high calibre manpower.
 - (5) The Board shall consider and in consultation with the National Income and Wages Commission determine and review from time to time the remunerations and allowances payable to the Agency's staff.

9. Pensions Reform Act 2004 No.4

- (1) Service in the Agency shall be approved service for the purpose of the Pensions Act, and accordingly, officers and employees of the Agency shall be entitled to pensions, gratuities and other retirement benefits as are' prescribed under the Pension Act.
[Cap. P4]
- (2) Without prejudice to the provisions of subsection (1) of this section, nothing in this Act shall prevent the appointment of a person to any Office on terms and conditions which preclude the grant of a pension, gratuity or other retirement benefits in respect of that Office.
- (3) For the purpose of the application of the provisions of the Pensions Act, any power exercisable by a Minister or other authority of the Federal Government, other than the power to make regulations, under section 23 thereof, is hereby vested in and shall be exercisable by the Board and not by any other person or authority.

10. Staff regulations

- (1) Subject to the provisions of this Act, the Agency may make staff regulations relating generally to the conditions of service of the staff and without prejudice to the generality of the foregoing, such regulations may provide for:

- (a) the appointment, promotion, termination, dismissal and disciplinary control of staff or employees of the Agency; and
 - (b) appeals by staff or employees against dismissal or other disciplinary measures and until such regulations are made any instrument relating to conditions of service in the Public Service of the Federation shall be applicable, with such modifications as may be necessary, to the employees of the Agency.
- (2) The staff regulations made under subsection (1) of this section shall not have effect until approved by the Board, and when so approved the Agency shall cause a notice of the staff regulations to be issued to all affected staff in such manner as it may, from time to time, determine.

11. Removal from Office of the Director-General, etc.

Notwithstanding the provisions of sections 7 (c) and 9 of this Act, the Director-General of the Agency may be removed by the President on the recommendation of the Minister.

PART IV

Establishment of the National Information Technology Development Fund

12. Establishment, etc. of the National Information Technology Development Fund

- (1) There is established a fund, which shall be known as the National Information Technology Development Fund (in this Act referred to as “the Fund”).
- (2) There shall be paid and credited into the Fund established under subsection (1) of this section-
 - (a) a levy of one percent of the profit before tax of companies and enterprises enumerated in the Third Schedule to this Act with an annual turnover of ₦100,000,000 and above and such paid by the companies shall be tax deductible;
[Third Schedule]
 - (b) grants-in-aid and assistance from bilateral and multilateral agencies;
 - (c) all other sums accruing to the Fund by way of gifts, endowments, bequest or other voluntary contributions by persons and organisations:

Provided that the terms and conditions attached to such gifts, endowments, bequest or contributions will not jeopardise the functions of the Agency;
 - (d) such monies as may be appropriated for the Fund by the National Assembly; and
 - (e) all other monies or assets that may, from time to time accrue to the Fund.

13.Exempted from tax

All monies accruing to the Fund and accounts of the Agency from the sources specified in sections 12 and 19 of this Act respectively shall be exempted from income tax and all contributions to the Fund and the accounts of the Agency shall be tax deductible.

14.Investments

The Board may, in accordance with the Trustee Investments Act, invest any surplus funds in profit yielding ventures and the net incomes so generated shall be paid into the treasury.

[Cap. T22]

15.Accounts and report of the Fund

- (1) The Director-General of the Agency shall keep proper records of the accounts, sources and use of the monies and assets of the Fund and shall render accounts to the Board, from time to time.
- (2) The account of the Fund shall be audited not later than 3 months after the end of the year to which it relates by auditors appointed by the Board from the list and in accordance with the guidelines supplied by the Auditor-General for the Federation.

16.Federal Inland Revenue Service to collect levy and pay into the Fund

- (1) The Federal Inland Revenue Service shall assess and collect the levy imposed under section 12 of this Act.
- (2) The Federal Inland Revenue Service shall, while assessing any company for either company income tax or petroleum profit tax for an accounting period of the company, also assess such company for the levy or tax due under this Act.
- (3) The levy imposed under section 12 of this Act shall be due and payable within 60 days after the Federal Inland Revenue Service has served notice of the assessment on a company in such form as the Federal Inland Revenue Service may, from time to time, determine.
- (4) Where a levy due under section 12 of this Act is not paid within the time specified in that section, the Federal Inland Revenue Service shall serve on the company, a demand note for the unpaid tax plus a sum which is equal to 2 percent of the levy.
- (5) Any company, agency or organisation that fails within two months after a demand note, to pay the levy or the import duty imposed under section 11 of this Act commits an offence and is liable on conviction to a fine of not less than ₦1,000,000.00 and the chief executive officer of the company, agency or organisation shall be liable to be prosecuted and punished for the offence in like manner as if he had himself committed the offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

- (6) The institution of proceedings or imposition of a penalty under this Act shall not relieve a company or organisation from liability to pay to the Federal Inland Revenue Service such levy or levies that may become due under this Act.

17. Offences

- (1) Except as otherwise provided in this Act, any person or corporate body who contravenes or fails to comply with the provisions of this Act commits an offence.
- (2) Where a body corporate fails to make payment within two months after a demand note for unpaid levy plus a sum which is equal to 2 percent of this levy has been served on the body corporate, the body corporate commits an offence under this Act.
- (3) Where an offence under this Act is committed by a body corporate or firm or other association of individuals-
 - (a) every chief executive officer of the body corporate or any officer acting in that capacity or on his behalf; and
 - (b) every person purporting to act in any capacity mentioned under paragraph (a) of this subsection commits an offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.
- (4) Where a person or body corporate fails to comply with the guidelines and standards prescribed by the Agency in the discharge of its duties under this Act, such person or body corporate commits an offence.
- (5) The Agency shall collaborate with the Standards Organisation of Nigeria to enforce the guidelines and standards formulated by the Agency in the discharge of its duties under the Act.

18. Offences relating to body corporate

- (1) Except as otherwise provided in this Act, anybody corporate or person who commits an offence under this Act where no specific penalty is provided is liable on conviction-
 - (a) for a first offence, to a fine of ₦200,000 or imprisonment for a term of 1 year or to both such fine or imprisonment; and
 - (b) for a second and subsequent offences, to a fine of ₦500,000 or to imprisonment for a term of 3 years or to both such fine and imprisonment.
- (2) The institution of proceedings or imposition of a penalty under this Act shall not relieve a body corporate from liability to pay to the Federal Inland Revenue Service such levy or tax which or may become due under this Act.

PART V

Information Technology Parks

19. Information technology parks

- (1) Subject to this Act, the Minister shall by Order, designate and facilitate the establishment of Information Technology Parks (in this Act referred to as “the Parks”) all over the country.
- (2) Upon application made in that behalf by the Minister, through the Board charged with responsibility for matters relating to Commerce, the President may by Order designate the Parks as Free Zones and may specify in the Order such incentives and/or tax holidays that enterprises engaged in the Parks may enjoy.

PART VI

Financial Provisions

20. Accounts of the Agency

- (1) The Agency shall establish and maintain an account into which shall be paid and credited-
 - (a) all subventions and budgetary allocations from the Federal Government;
 - (b) gifts, loans, grants-in-aid from national, bilateral and multilateral organisations and agencies;
 - (c) rents, fees and other internally generated revenues from services provided by the Agency; and
 - (d) all other sums accruing to the Agency from time to time.

21. Expenditure of the Board

- (1) The Agency may, from time to time, apply the proceeds of the Fund established under section 12 of this Act:
 - (a) to the cost of administration of the Agency;
 - (b) to the payment of the emoluments, allowances and benefits of members of the Board and for reimbursing members of the Board or of any committee set up by the Board and for such expenses as may be expressly authorised by the Boards;
 - (c) to the payment of the salaries, fees or other remuneration or allowances, gratuities and pensions, and other benefits payable to the staff and other employees of the Agency, so however that no payment of any kind under this paragraph (except such as may be expressly authorised by the Board) shall be made to any person who is in receipt of emoluments from the Government of the Federation or of a State;

- (d) for the development and maintenance of any property vested in or owned by the Agency;
 - (e) for maintaining general financial reserves subject to general or special directive that may be given in that behalf by the Minister in accordance with the provisions of this Act; and
 - (f) to any other expenditure in connection with all or any of its functions under this Act.
- (2) Proceeds from the Fund established under section 12 (b) shall be applied for the purpose which such gifts, loans or grants-in-aid were made.
 - (3) Proceeds from the Funds established under section 12 (c) shall be remitted to the Treasury of the Federal Government.

22. Annual estimates and accounts

- (1) The Agency shall, not later than 30th September in each year, submit to the Minister an estimate of its expenditure and income (including payments to the Agency's Fund) for the next succeeding year.
- (2) The Agency shall keep proper accounts in respect of each year and proper records in relation to those accounts and shall cause its accounts to be audited within six months after the end of each year by auditors appointed from the list and in accordance with the guidelines supplied by the Auditor-General for the Federation.

23. Annual reports

The Agency shall prepare and submit to the Minister not later than 30th June in each year a report in such form as prescribed in this Act on the activities of the Agency during the immediately preceding year, and shall include in the report a copy of the audited accounts of the Agency for that year and of the auditor's report thereon.

24. Power to accept gifts

- (1) The Agency may accept gift of land, money or other property on such terms and conditions, if any, as may be specified by the person or organisation making the gift.
- (2) The Agency shall not accept any gift if the conditions attached by the person or organisation making the gift are inconsistent with the functions of the Agency under this Act.

25. Power to borrow

The Agency may, in accordance with the general authority of the Minister, borrow such sums of money as the Agency may require in the exercise of its functions under this Act or its subsidiary legislation.

26. Exemption from tax

- (1) The Agency shall be exempted from the payment of income tax on any income accruing from

investments made by the Board or otherwise howsoever.

- (2) The provisions, of any enactment relating to the taxation of companies or trust funds shall not apply to the Agency or the Board.

PART VII

Legal Proceedings

27. Limitation of suits against the Agency

- (1) Subject to the provisions of this Act, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against any member or officer or employee of the Agency.

[Cap. P41]

- (2) Notwithstanding anything contained in any other law or enactment, no suit against a member of the Board, the Director-General or any other officer or employee of the Board, for any act done in pursuance or execution of this Act or any other law or enactment, or of any public duties or authority or in respect of any alleged neglect or default in the execution of this Act or any other law or enactment, duties or authority, shall lie or be instituted in any court unless it is commenced-
 - (a) within three months next after the act, neglect or default complained of; or
 - (b) in the case of a continuation of damage or injury, within six months after the ceasing thereof.
- (3) No suit shall be commenced against a member of the Board, the Director-General or any other officer or employee of the Agency before the expiration of a period of one month after written notice of the intention to commence the suit shall have been served on the Agency by the intending plaintiff or his agent.
- (4) The notice referred to in subsection (3) of this section shall clearly and explicitly state-
 - (a) the cause of action;
 - (b) the particulars of the claim;
 - (c) the name and place of abode of the intending plaintiff; and
 - (d) the relief which he claims.

28. Service of documents

A notice, summons or other document required or authorised to be served on the Agency under the provisions of this Act or any other law or enactment may be served by delivering it to the Director-General or by sending it by registered post addressed to the Director-General at the

principal office of the Agency.

29. Restriction on execution against property of the Agency

- (1) In any action or suit against the Agency, no execution or attachment of process in the nature thereof shall be issued against the Agency unless not less than three months notice of the intention to execute or attach has been given to the Agency.
- (2) Any sum of money which by the judgment of any court has been awarded against the Agency shall, subject to any direction given by the court, where no notice of appeal against the judgment has been given, be paid from the Fund of the Agency.

30. Indemnity

A member of the Board, the Director-General or any officer or employee of the Agency shall be indemnified out of the assets of the Agency against any liability incurred by him in defending any proceeding, whether civil or criminal, if the proceeding is brought against him in his capacity as a member, Director-General, officer or other employee of the Agency.

PART VIII

Miscellaneous

31. Directives by the Minister, etc.

The Minister may give to the Agency or the Director-General such directives of a general nature or relating generally to matters of policy with regards to the exercise of its or his functions as he may consider necessary and it shall be the duty of the Agency or the Director-General to comply with the directives or cause them to be complied with.

32. Regulations by the Board

The Board may make such regulations as in its opinion are necessary or expedient for giving full effect to the provisions of this Act and for the due administration of its provisions.

33. Transitional provisions

The National Information Technology Development Agency is the successor-in-title in every way to the powers, duties and functions of the former National Information Technology Development Agency-

- (a) all existing contracts, agreements and compacts currently in effect by the National Information Technology Development Agency continue in effect;
- (b) all existing contracts currently in effect by the National Information Technology Development Agency continue in effect;

- (c) any positions authorised and allocated subject to the personnel laws of the former National Information Technology Development Agency are transferred to the National Information Technology Development Agency;
- (d) all records, property and equipment previously belonging to or allocated for use of the former National Information Technology Development Agency become on the effective date of this Act, part of the property of the National Information Technology Development Agency;
- (e) all existing forms, licences, letterheads and similar items bearing the name of or referring to the “National Information Technology Development Agency” may be utilised by the National Information Technology Development Agency until existing supplies of those items are exhausted.

34. Interpretation

In this Act-

“**Agency**” means the National Information Technology Development Agency established under section I of this Act;

“**Board**” means the Governing Board of the Agency established under this Act;

“**computer**” means any electronic device or computational machinery using programmed instructions which has one or more of the capabilities of storage, retrieval, memory, logic, arithmetic or communication and includes all input, output, processing, storage, software., or communication facilities which are connected or related to such a device in a system or network or control functions by the manipulation of signals, including electronic, magnetic or optical, and shall include any input, output, data storage, processing or communication facilities directly related to or operating in conjunction with any such device or system or computer network;

“**computer network**” means the interconnection of one or more computers;

“**computer system**” means a device or collection of device, including input and, output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer program; electronic instructions, input data and output data, that performs logic arithmetic, data storage and retrieval, communication control and other functions;

“**data**” means a representation of information, knowledge, facts, concepts or instruction which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printout, magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computers;

“**Director-General**” means the Director-General of the Agency appointed under section 8 of this Act;

“electronic form” with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory film, computer generated, micro fiche or similar device;

“electronic record” means data, record or data generated, image, or sound stored, received or sent in an electronic form or microfilm or computer generated micro fiche;

“Government” means the Federal Government of Nigeria;

“information technology” encompasses all forms of technology used to create, store, exchange and use, information in its various forms (business data, voice, conversation, still images, motion pictures, multimedia presentations and other forms including those not yet conceived);

“Minister” means the Minister charged with the responsibility of matters relating to Science and Technology;

“President” means the President of the Federal Republic of Nigeria;

“software” includes any program, procedure and associated documentation concerned with the operation of a computer system.

35.Short title

This Act may be cited as the National Information Technology Development Agency Act, 2007.

SCHEDULES

FIRST SCHEDULE

[Section 2 (4)]

Supplementary Provisions relating to the Board, etc.

Proceedings of the Board

1. Subject to this Act and section 27 of the Interpretation Act (which provides for decisions of a statutory body to be taken by a majority of its members and for the person presiding at any meeting, when a vote is ordered, to have a second or casting vote), the Board may make standing orders regulating its proceedings or that of any of its committees.
2. At every meeting of the Board, the Chairman shall preside and in his absence the members present at that meeting shall appoint one of their numbers to preside at that meeting.
3. The quorum at a meeting of the Board shall be not less than one-third of the total number of the Board members at the date of the meeting.
4. The Board shall for the purposes of this Act, meet not less than four times in each year and subject, thereto, the Board shall meet, whenever it is summoned, by the Chairman, and if required to do so by notice given to him by not less than $\frac{1}{3}$ of members, he shall summon a meeting of the Board to be held within fourteen days from the date in which the notice is given.
5. Where the Board desires to obtain of any person on any particular matter, the Board may co-opt him to the Board for such as it thinks fit, but a person who is a member by virtue of this paragraph shall not be entitled to vote at any meeting of the Board and shall not count towards a quorum.

Committees

6.
 - (1) Subject to its standing orders, the Board may appoint such number of standing or *ad hoc* committees as it thinks fit to consider and report on any matter with which the Board is concerned.
 - (2) A committee appointed under this paragraph shall:
 - (a) consist of such number of persons (not necessarily members of the Board as may be determined by the Board) and a person, other than a member of the Board, shall hold Office on the committee in accordance with the terms of his appointment; and
 - (b) be presided over by a member of the Board.
 - (3) The quorum of any committee set up by the Board shall be its quorum as provided under

paragraph 3 of this Schedule.

- (4) The decision of any committee of the Board shall constitute a recommendation to the Board.

Miscellaneous

7. The fixing of the Seal of the Agency shall be authenticated by the signature of the Chairman or any other person generally or specifically authorised by the Board to act for that purpose and that of the Director-General.
8. Any contract or instrument which if made by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the Board by the Director-General or any other person generally or specifically authorised by the Board to Act for that purpose.
9. Any document purporting to be contract, instrument or other document duly signed or sealed on behalf of the Agency shall be received in evidence and shall, unless the contrary is proved, be presumed without further proof to have been so signed or sealed.
10. The validity of any proceedings of the Board or any of its committees shall not be affected by-
 - (a) any vacancy in the membership of the Board, or committee; or
 - (b) any defect in the appointment of a member of the Board or committee; or
 - (c) reason that any person not entitled to do so took part in the proceedings of the Board or committee.
11. A member of the Board or committee who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Board or committee shall forthwith disclose his interest to the Board or committee and shall not vote on any question relating to the contract or arrangement.
12. No member of the Board shall be personally liable for any act or omission done or made in good faith while engaged in the business of the Board.

SECOND SCHEDULE

[Section 6 (m).]

Supplementary Provisions relating to the Supervision of the Management of the Country Code Top Level Domain (.ng) on the internet

1. Subject to the provisions of this Act, the Agency shall advise the Federal Government generally on matters and issues that are related to the management and administration of Nigeria's country code top level domain (.ng).
2. The Agency shall have supervisory authority over organisations incorporated under the laws of Nigeria to manage and administer Nigeria's country code top level domain (.ng) including but not limited to the following-
 - (a) approve the constitution of the management of any such organisation created to carry out the acts mentioned in paragraph 2 (I) of this Schedule;
 - (b) lay down standards which shall ensure that the membership of the organisation when viewed collectively is broadly representative of the stakeholders of ICT community in the country;
 - (c) outline an operational rule for the organisation which shall include but not limited to the following-
 - (i) the creation of any departments of the organisation to perform specialised functions;
 - (ii) the establishment and functioning of committees including a management board;
 - (iii) the preparation by the organisation of an annual business plan in terms of which the activities of the organisation are planned annually;
 - (iv) the determination through arbitration of any dispute concerning the interpretation of the memorandum and articles of association of the organisation;
 - (v) the procedures and criteria for the establishment of second level domains and for delegations to such domains;
 - (vi) the domain name dispute resolution and related appeal mechanisms;
 - (vii) criteria for the qualification of and appointment of Domain Name Registrars and Domain Name Hosts.
3. The Agency shall ensure that the activities of the organisation comply with international best practice in the administration of country code top level domains.

THIRD SCHEDULE

[Section 12 (2) (a).]

Businesses which section 12 (2) (a) refers to:

- (i) GSM service providers and all telecommunications companies;
- (ii) cyber companies and internet providers;
- (iii) pensions managers and pension related companies;
- (iv) banks and other financial institutions;
- (v) insurance companies.

CHAPTER N107

NIGERIA EXPORT PROCESSING ZONES ACT ARRANGEMENT OF SECTIONS

SECTION

1. Establishment of the Nigeria Export Processing Zones.
2. Establishment of the Nigeria Export Processing Zones Authority and its governing Board, etc.
3. Membership of the governing Board.
4. Functions of the Authority.
5. Appointment of managing director, secretary and other employees.
6. Approved activities, etc.
7. Vesting of property in the Authority.
8. Exemption from taxes.
9. Approval of enterprise to undertake approved activity.
10. Power to grant licence.
11. Payment of goods and services.
12. Import of goods into the Zone.
13. Persons not to enter Zones without permission.
14. Prohibition of retail trade.
15. Special provisions relating to article imported with custom duty cessions.
16. Prohibition of storage of ammunition and dangerous explosives.
17. Export of goods from a Zone.
18. Incentives and related matters.
19. Enterprises to submit returns.
20. Work permits.
21. Staff regulations.

22. Fund of the Authority.
23. Annual estimates, accounts, etc.
24. Enactments applicable in customs territory to apply.
25. Omission and non-compliance.
26. Repeal.
27. Regulations.
28. Interpretation.
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SCHEDULES

FIRST SCHEDULE

Supplementary provisions relating to the Authority

SECOND SCHEDULE

Transfer of assets and liabilities, etc.

THIRD SCHEDULE

Approved activities

FOURTH SCHEDULE

Duty free articles

CHAPTER N107

NIGERIA EXPORT PROCESSING ZONES ACT

An Act to provide for the establishment of the Nigeria Export Processing Zones and for matters connected therewith.

[1992 No. 63.]

[Commencement]

[19th November, 1992]

1. Establishment of the Nigeria Export Processing Zones

- (1) The President may from time to time, by order, upon the recommendation of the Nigeria Export Processing Zones Authority established under this Act, designate such areas as he thinks fit to be an export processing zone (in this Act referred to as “a Zone”).
- (2) The Zone established pursuant to subsection (1) of this section, may be operated and managed by a public, private or combination of public and private entity under the supervision of and with the approval of the Nigeria Export Processing Zones Authority established by section 2 of this Act.
- (3) Every order made pursuant to subsection (1) of this section, shall specify the limits of the area designated and ascribe a name to that Zone.
- (4) The Nigeria Export Processing Zones Authority may from time to time, by order, amend, vary or add to the limits of a Zone or change the name of a Zone.
- (5) An order made under subsection (3) of this section shall not affect an approved enterprise existing before the commencement of the order.

2. Establishment of the Nigeria Export Processing Zones Authority and its governing Board, etc.

- (1) There is hereby established for the Nigeria Export Processing Zones, an authority to be known as the Nigeria Export Processing Zones Authority (in this Act referred to as “the Authority”).
- (2) The Authority shall be a body corporate, with perpetual succession and a common seal and may sue and be sued in its corporate name and shall be capable of acquiring, holding or disposing of any property, movable or immovable, for the purpose of carrying out its functions.

3. Membership of the governing Board

- (1) There shall be for the Authority a governing Board which shall consist of a chairman to be appointed by the President on the recommendation of the Minister and the following other

members, that is to say-

- (a) a representative each from the following Federal Ministries, that is- [1993 No. 77]
 - (i) Commerce;
 - (ii) Culture and Tourism;
 - (iii) Industry; and
 - (iv) Science and Technology;
 - (b) the Comptroller- General of Customs or his representative not below the rank of an assistant director;
 - (c) the Managing Director of the Nigerian Ports Authority or his representative not below the rank of a deputy director;
 - (d) one representative each from the following bodies, that is-
 - (i) the Nigerian Association of Chambers of Commerce, Industries, Mines and Agriculture;
 - (ii) the Manufacturers Association of Nigeria;
 - (iii) the Association of Nigerian Exporters
 - (e) two persons to be appointed by the Minister from the private sector who shall be persons possessing practical experience in industry, commerce, finance, export promotion and other related fields;
 - (f) a representative of the Central Bank of Nigeria not below the rank of a Director; and
 - (g) the managing director of the Authority.
- (2) A member of the Board other than *ex-officio* member shall, subject to the provisions of this Act, hold office for a period of four years from the date of his appointment as a member and shall be eligible for reappointment for one further period of two years and thereafter he shall no longer be eligible for reappointment.
- (3) Notwithstanding subsection (2) of this section, the President may on the recommendation of the Minister require any member to vacate his office if his continued membership will not be in the interest of the Authority.
- (4) Any member of the Board other than an *ex-officio* member may by notice in writing to the Board resign his appointment.

- (5) The supplementary provisions contained in the First Schedule to this Act shall have effect with respect to the tenure of office of the members and the proceedings of the Board and other matters relating to the Board.

[First Schedule.]

4. Functions of the Authority

In addition to any other functions conferred on the Authority by this Act, the functions and responsibilities of the Authority shall include-

- (a) the administration of the Authority and management of all the Export Processing Zones;
- (b) the approval of development plans of the Authority and Zones' annual budgets in respect of infrastructures, administrative buildings, promotion of Zones, the provision and maintenance of services and facilities;
- (c) the establishment of customs, police, immigration and similar posts in the Zones;
- (d) the supervision and coordination of the functions of various public sector and private sector organisations operating within the Zones and resolving any dispute that may arise amongst them;
- (e) the resolution of trade disputes between employers and employees in the Zone, in consultation with the Federal Ministry of Employment, Labour and Productivity;
- (f) the adaptation of investment promotion strategies in the Zones, including the opening of investment promotion offices abroad;
- (g) the recommendation to the Federal Government of additional incentive measures for the Zones;
- (h) the establishment and supervision of zonal administrations for the purpose of managing the Zones and the grant of all requisite permits and licences to approved enterprises.

5. Appointment of managing director, secretary and other employees

- (1) There shall be for the Authority a managing director who shall be the chief executive and shall be appointed by the President on the recommendation of the Minister.
- (2) The managing director shall be responsible for-
 - (a) the preparation of plans, annual programmes and budget;
 - (b) the recommendation of bye-laws applicable in each Zone;
 - (c) the development of strategies for the promotion of the Zones inside and outside the country;
 - (d) the implementation of the approved plans, programmes and budgets;

- (e) the day-to-day administration of the Authority.
- (3) Without prejudice to the generality of subsection (1) of this section, the Authority shall have the power to-
 - (a) appoint a secretary who shall be qualified to practice as a legal practitioner in Nigeria and has been so qualified for not less than ten years;
 - (b) pay the employees such remuneration and allowances as it may, from time to time, determine;
 - (c) pay the employees such pensions and gratuities as are payable to persons of equivalent grades in the public service of the Federation.

6. Approved activities, etc.

- (1) Subject to subsection (2) of this section, the activities specified in the Third Schedule to this Act shall be approved activities for the purposes of this Act.
[Third Schedule.]
- (2) The Authority may, from time to time, prescribe the activities which may be carried on in a Zone, and for this purpose may, by order, amend the Second Schedule to this Act.
[Second Schedule]

7. Vesting of property in the Authority

The President or Governor of a State respectively may, by order, transfer to the Authority, any property belonging to the Federal or State Governments respectively which appears to be necessary or expedient to the Authority in carrying out its functions under this Act and such property shall vest in the Authority by virtue of the order and without further assurance.

8. Exemption from taxes

Approved enterprises operating within a Zone shall be exempted from all Federal, State and Government taxes, levies and rates.

9. Approval of enterprise to undertake approved activity

- (1) Any enterprise which proposes to undertake an approved activity within a Zone, shall apply to the Authority in writing for permission to do so and shall submit such documents and information in support of its application as the Authority may require.
- (2) Subject to the provisions of this Act, the Authority may grant, subject to such terms and conditions as it thinks fit, approval for an enterprise to undertake the approved activity specified in its application brought under subsection (1) of this section.
- (3) For the purposes of this section, “**approved activity**” means any of the activities specified in the Third Schedule to this Act.

[Third Schedule]

10. Power to grant licence

- (1) The Authority may grant a licence for any approved activity in a Zone to an individual or business concern whether or not the business is incorporated in the customs territory.
- (2) The grant of a licence by the Authority shall constitute registration for the purposes of company registration within the Zone.
- (3) A licensed company operating within a Zone and undertaking an approved activity shall notify the Authority of any purchase, assignment or transfer of shares in the company, except where the company's shares are quoted and are freely transferable on any international Stock Exchange.
- (4) The Authority shall by order, from time to time, prescribe the regulations governing the Zone.

11. Payment of goods and services

- (1) Where an approved enterprise operating in a Zone supplies goods and services to customers within the customs territory, that enterprise shall be entitled to receive payment for such goods and services in foreign currency and for the purposes of such payment, the normal rules and regulations applicable to importation of goods and services into Nigeria and repatriation of the proceeds of sales or services shall apply.
- (2) Where a person within the customs territory supplies goods and services to an approved enterprise established within a Zone, that person shall be entitled to receive payment for such goods or services in foreign currency and the rules and regulations applicable to export from Nigeria and the repatriation of proceeds from sales or services shall apply.

12. Import of goods into the Zone

- (1) The Authority and any approved enterprise shall be entitled to import into a Zone, free of customs duty, any capital goods, raw materials, components or articles intended to be used for the purposes of and in connection with an approved activity, including any article for the construction, alteration, reconstruction, extension or repair of premises in a Zone or for equipping such premises.
- (2) For the purposes of this section, articles for equipping premises shall be deemed to include equipment for offices and other ancillary facilities necessary for the proper administration of the premises and for the health, safety, hygiene and welfare of the premises and of persons employed therein.
- (3) The Authority may by order, amend, or vary the articles specified in the Fourth Schedule to this Act.

[Fourth Schedule]

- (4) All goods brought into a Zone shall be consigned-

- (a) to the Authority or to an approved enterprise and the goods may, with the approval of the Authority, be transferred from one approved enterprise to another or from the Authority to an approved enterprise or from an approved enterprise to the Authority; or
 - (b) without prejudice to the provisions of subsection (2) of this section, to a bank acting on behalf of any party to a transaction involving the Authority or an approved enterprise.
- (5) The Authority may take such steps as it deems necessary to preserve goods within a Zone, whether by moving the goods from one place to another or by storing the goods and where any expenses are incurred by the Authority in so doing, the owner or consignee of the goods shall reimburse the Authority for the expenses.
- (6) Subject to the provisions of this Act and any regulations made thereunder, goods brought into a Zone pursuant to this section may-
- (a) unless otherwise directed by the Authority, be stored, sold, exhibited, broken up, packed, graded, cleaned, marked, re-marked, loaded, unloaded, reloaded, divided, mixed, separated or otherwise manipulated; or
 - (b) be worked, processed or reprocessed or otherwise manipulated or manufactured; or
 - (c) be consumed if the goods are meant for consumption in the Zone, unless otherwise
 - a. directed by the Authority; or
 - (d) subject to subsection (7) of this section, be removed from a Zone or sent into the customs territory, whether as originally packed or otherwise; or
 - (e) subject to any enactment pertaining thereto, be destroyed.
- (7) Where any goods which are dutiable on entry into the customs territory are sent from a Zone into the customs territory, the goods shall be subject to the provisions of the Customs, Excise Tariff, etc. (Consolidation) Act and any regulations made thereunder, and if the goods are intended to be disposed of in the customs territory shall not be removed from the Zone unless-
- [Cap. C49.]
- (a) the consent of the Authority has been obtained; and
 - (b) the relevant customs authorities are satisfied that all import restrictions relevant thereto have been complied with and all duties payable in connection with the importation thereof into the customs territory have been paid.
- (8) Samples of goods being taken into the customs territory shall be subject to the provisions of subsection (6) of this section, except in cases where the relevant customs authority is satisfied that such goods are of no commercial value.
- (9) Where goods are brought from the customs territory into a Zone for the purposes of an approved activity the goods shall be deemed to be exported.

- (10) The Pre-Import Inspection Scheme shall not apply to imports of goods into the Zones for use by the approved enterprises in the Zones.

13. Persons not to enter Zones without permission

- (1) No person shall enter, remain in or reside in a Zone without the prior permission of the Authority.
- (2) Any person who contravenes the provisions of subsection (1) of this section shall have his permit revoked by the Authority.

14. Prohibition of retail trade

- (1) No retail trade shall be conducted within a Zone without the prior approval of the Authority and which may be subject to such terms and conditions as may be imposed, from time to time, by the Authority.
- (2) Any person who contravenes the provisions of subsection (1) of this section or of a term or condition imposed pursuant to that subsection shall have his licence revoked by the Authority.

15. Special provisions relating to articles imported with custom duty cessions

- (1) An approved enterprise which imports into a Zone an article with a benefit in respect of customs duty under the provisions of this Act shall-
- (a) keep such records of the articles so imported in such forms and containing such particulars as may be required by the Authority;
 - (b) cause the articles to be marked with such mark and in such manner as may be required by the Authority;
 - (c) permit the Authority or person authorised by the Authority at all reasonable times-
 - (i) to inspect the records relating to those articles; and
 - (ii) to have access to any factory, warehouse, assembly plant or other premises under the control of the approved enterprise

for the purpose of examining the article which the Authority believes to be therein and of satisfying itself of the accuracy of the particulars in relation to the article contained in such records.

- (2) Any person who contravenes the provisions of subsection (1) of this section is guilty of an offence.

16. Prohibition of storage of ammunition and dangerous explosives

- (1) Notwithstanding any other provision of this Act, the following goods shall not be imported,

taken into or stored in a Zone-

- (a) firearms and ammunition, other than by members of the Nigeria Police Force or the armed forces of the Federation or by security agencies employed to work in a Zone in the course of their duties or by such other persons as may be authorised by the Authority.
 - (b) dangerous explosives, without prior approval of the Authority;
 - (c) petrol, inflammable materials, hazardous cargoes or oil fuels, other than in such quantities and on such terms and conditions as may be prescribed by the Authority;
 - (d) goods which the Authority by order has imposed specific or absolute prohibition on their importation into a Zone.
- (2) Any person who contravenes the provisions of subsection (1) of this section is guilty of an offence.

17. Export of goods from a Zone

Export of goods from a Zone to the customs territory shall, except as otherwise prescribed by or pursuant to this Act, be subject to the same customs and licensing requirements as apply to goods imported from other countries.

18. Incentives and related matters

- (1) Approved enterprises within the Zones shall be entitled to the following incentives-
- (a) exemption from taxes, levies, duties and foreign exchange regulations in accordance with section 8 of this Act, subject always to the provisions of the Banks and Other Financial Institutions Act, 2020; provided that all companies registered and operating in the Zone shall comply with the provisions of section 55 (1) of the Companies Income Tax Act and render returns in the manner prescribed therein, to the Federal Inland Revenue Service and all penalties prescribed in the Companies Income Tax Act and the Federal Inland Revenue Service (Establishment) Act that may apply in the event of noncompliance with section 55 (1) of the Companies Income Tax Act shall apply to such companies in the event of default to comply;
[2020 No. 1, s. 58]
 - (b) repatriation of foreign capital investment in the Zones at any time with capital appreciation of the investment;
 - (c) remittance of profits and dividends earned by foreign investors in the Zones;
 - (d) no import or export licences shall be required;
 - (e) up to 25% of production may be sold in the customs territory against a valid permit and on payment of appropriate duties;
 - (f) rent-free land at construction stage; thereafter rent shall be paid as determined by the

Authority;

- (g) up to 100% foreign ownership of business in the Zones allowable;
 - (h) foreign managers and qualified personnel may be employed by companies operating in the Zones.
- (2) The Authority shall be the only agency qualified to-
- (a) give all approvals; and
 - (b) cancel all licences
- (3) The Authority shall simplify all procedure necessary for authorisation of investments in a Zone and state by order, from time to time, its requirements for the grant of authorisations for investments in a Zone.
- (4) Operations within a Zone shall commence on the date when the construction of the perimeter fence and gate of the Zone has been completed and the Authority has assumed duties.
- (5) There shall be no strikes or lock-outs for a period of ten years following the commencement of operations within a Zone and any trade dispute arising within a Zone shall be resolved by the Authority.

19. Enterprises to submit returns

An approved enterprise shall submit to the Authority at such intervals as may be prescribed, such statistical data and such information and returns as regards the sales and purchases and other operations of the enterprise as the Authority may require or as may be prescribed, from time to time.

20. Work permits

Where a person who is a non-Nigerian citizen is employed by the Authority or by an approved enterprise established in a Zone, upon application by the enterprise for a licence to establish itself within the Zone or at any time thereafter, the enterprise shall apply on behalf of the non-Nigerian citizen, direct to the Authority for the purpose of immigration and employment permits, in such manner as may be prescribed by the Authority.

21. Staff regulations

- (1) The Authority may make staff regulations relating generally to the conditions of service of the employees of the Authority and without prejudice to the generality of the foregoing such regulations may provide for-
- (a) the appointment, promotion and disciplinary control of all employees of the Authority; and
 - (b) appeal by such employees against dismissal or other disciplinary measures,

and until such regulations are made, the regulations relating to the conditions of service of the officers in the civil service of the Federation and the provisions of the Pensions Act shall be applicable with such modifications as may be necessary to the staff of the Authority.

- (2) Approved enterprises operating within the Zones shall make provisions for the pensions and gratuities for their employees.

22. Fund of the Authority

- (1) The Authority shall establish and maintain a fund which shall consist of-
 - (a) all moneys received from the Federal Government;
 - (b) proceeds from all activities, services and operations of the Authority;
 - (c) grants, gifts and donations made to the Authority; and
 - (d) such other sum as may accrue, from time to time, to the Authority
- (2) The Authority shall, from time to time, apply proceeds of the fund established pursuant to subsection (1) of this section-
 - (a) to the cost of administration of the Authority;
 - (b) to the payment of the salaries, fees or other remuneration or allowances, pensions and gratuities payable to the officers and employees of the Authority;
 - (c) for reimbursing members of the Board or of any committee set up by the Board for such expenses as may be expressly authorised by the Authority in accordance with the rates approved by the President;
 - (d) for the maintenance of any property vested in the Authority; and
 - (e) for investment, maintenance of Zones, marketing, promotion, training, research and similar activities.

23. Annual estimates, accounts, etc.

- (1) The Authority shall, not later than 31 October in each year, submit to the Minister an estimate of its expenditure and income (including payments into the fund of the Authority) during the next succeeding year.
- (2) The Authority shall keep proper accounts in respect of each year (and proper records in relation thereto) and shall cause its accounts to be audited within six months after the end of each year by auditors appointed from the list and in accordance with the guidelines supplied by the Auditor-General for the Federation.

24. Enactments applicable in customs territory to apply

- (1) Except as provided under this Act, an enactment applicable in a customs territory shall apply within the Zones.
- (2) The Minister may, by order published in the Federal *Gazette*, modify the application of any enactment which is made applicable in a Zone by subsection (1) of this section, where the enactment concerned restricts or interferes with the smooth running of the Zone or operation of licences therein.

25. Omission and non-compliance

- (1) Every omission or neglect to comply with and every act done or attempted to be done contrary to the provisions of this Act or any regulations made thereunder shall be an offence and in respect of any such offence for which no penalty is expressly provided the offender shall be liable on conviction to a fine of ₦100,000 or to imprisonment for a term of three months or to both such fine and imprisonment.
- (2) Whoever attempts to commit any offence punishable under this Act or any regulations made thereunder or abets the commission of such offence shall be punished with the punishment provided for such an offence.
- (3) Where a body corporate is guilty of an offence under this Act, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity; he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

26. Repeal

- (1) The governing board of the Nigeria Export Processing Zones Authority established by the Nigerian Export Processing Zones Act 1991 is hereby dissolved and the said Act is hereby repealed.

[1991 No. 34.]

- (2) The transitional and saving provisions in the Second Schedule to this Act shall have effect in relation to the employees, assets and liabilities of the board dissolved under this section and other matters mentioned therein notwithstanding anything to the contrary in this Act or any other enactment.

[Second Schedule.]

- (3) Notwithstanding subsection (1) of this section, any order made, registration effected, licence or permit issued, notice or information given, return made or other thing done under the repealed enactment which, immediately before the commencement of this Act was in force or effect, shall continue in force and have effect as if made, effected, issued, given or done under the corresponding provisions of this Act.

27.Regulations

The Authority may, with the approval of the Minister, make regulations for the proper implementation of this Act.

28.Interpretation

In this Act, unless the context otherwise requires-

“approved activities” means activities specified in the Third Schedule to this Act;

“approved enterprise” means any enterprise established within a Zone approved by the Authority;

“Authority” means the Nigerian Export Processing Zones Authority established by section 2 of this Act;

“member” means a member of the Board and includes the chairman;

“Minister” means the Minister charged with responsibility for matters relating to trade.

29.Short title

This Act may be cited as the Nigeria Export Processing Zones Act.

SCHEDULES

FIRST SCHEDULE

[Section 3 (5).]

Supplementary provisions relating to the Authority

Proceedings of the Board

1.

- (1) Subject to this Act and to section 27 of the Interpretation Act, the Board may make standing orders regulating the proceedings of the Authority or of any committee thereof.
[Cap. I23.]
- (2) The quorum of the Board shall be eight and the quorum of any committee of the Board shall be as may be determined by the Board from time to time.

2.

- (1) The Board shall meet not less than four times in each year and, subject thereto, the Board shall meet whenever it is summoned by the chairman, and if the chairman is required to do so by notice given to him by not less than three other members, he shall summon a meeting of the Board to be held within fourteen days from the date on which the notice is given.
- (2) At any meeting of the Board, the chairman shall preside, but if he is absent, the members present at the meeting shall appoint one of their number to preside at that meeting.
- (3) Where the Board desires to obtain the advice of any person on a particular matter, the Board may co-opt him as a member for such period as it thinks fit:

Provided that a person who is a member by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the Board and shall not count towards the quorum.

Committees

3.

- (1) The Board may appoint one or more committees to carry out on behalf of the Board such of its functions as the Authority may determine.
- (2) A committee appointed under this paragraph shall consist of such number of persons (not necessarily members of the Board) as may be determined by the Board; and a person other than a member of the Board shall hold office on the committee in accordance with the terms of his appointment.

Miscellaneous

4.

- (1) The fixing of the seal of the Authority shall be authenticated by the signature of the chairman and of any other member authorised generally or specially by the Board to act for that purpose.
- (2) Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the Board by the chairman and the managing director or any person authorised generally or specially by the Authority to act for that purpose.

5. Members of the Board shall be paid out of moneys at the disposal of the Board such remuneration, fees or allowances in accordance with such scales as may be approved, from time to time, by the Minister.

6. The validity of any proceedings of the Board or of a committee thereof shall not be adversely affected by any vacancy in the membership of the Board or of a committee or by the defect in the appointment of any member of the Board or committee or by reason that a person not entitled to do so took part in the proceedings.

7.

- (1) A member of the Board who is-
 - (a) directly or indirectly interested in any company or enterprise the affairs of which are being deliberated upon by the Authority; or
 - (b) is interested in any contract made or proposed to be made by the Authority shall as soon as possible after the relevant facts have come to his knowledge disclose the nature of his interest at a meeting of the Board.
- (2) A disclosure under sub-paragraph (1) of this paragraph shall be recorded in the minutes of the meeting of the Board and the member shall-
 - (a) not take part after such disclosure in any deliberation or decision of the Board with regard to the subject matter in respect of which his interest is thus disclosed;
 - (b) be excluded for the purposes of constituting a quorum of the Board for any such deliberation or decision.

SECOND SCHEDULE

[Section 26 (2).]

Transfer of assets and liabilities, etc.

1. By virtue of this Act, there shall be vested in the Authority established under this Act (in this Schedule referred to as “the Authority”) all assets, funds, resources and other movable or immovable property which immediately before the commencement of this Act were vested in the Authority established under the repealed enactment (in this Schedule referred to as “the former Authority”).
2. Subject to the provision of paragraph 1 of this Schedule-
 - (a) the rights, interest, obligations and liabilities of the former Authority existing immediately before the commencement of this Act under any contract or instrument, or at law or in equity apart from any contract or instrument, shall by virtue of this Act be deemed to have been assigned to and vested in the Authority;
 - (b) any such contract or instrument as is mentioned in sub-paragraph (a) of this paragraph shall be of the same force and effect against or in favour of the Authority and shall be enforceable as fully and effectively as if instead of the former Authority the Authority had been named therein or had been a party thereto; and
 - (c) the Authority shall be subject to all the obligations and liabilities to which the former Authority was subject immediately before the commencement of this Act and all persons shall, as from the commencement of this Act have the same rights, powers and remedies against the Authority as they had against the former Authority immediately before this day.
3. Any proceeding or cause of action pending or existing immediately before the commencement of this Act by or against the former Authority in respect of any rights, interest, obligation or liability of the former Authority may be continued, or as the case may require, commenced, and the determination of a court of law, tribunal or other authority or person may be enforced by or against the Authority to the same extent that such cause of action or determination might have been continued or commenced or enforced by or against the former Authority as if this Act had not been made.
4. Any person who immediately before the commencement of this Act held office under the former Authority shall, on the commencement of this Act be deemed to have been transferred to the Authority on terms and conditions not less favourable than those obtaining immediately before the commencement of this Act and service under the former Authority shall be deemed to be service under the Authority for pension purposes.
5. For the purposes of paragraph 4 of this Schedule, the terms and conditions comprised in any transferred appointment shall not be construed as being less favourable merely because they are not in all respects identical or superior to the terms and conditions enjoyed by any person concerned immediately before the commencement of this Act if the first-mentioned terms and conditions taken as a whole confer substantially equivalent or greater benefits.

6. Within the twelve months next after the making of this Act the Minister, if he thinks fit, may by order published in the Federal *Gazette* make additional transitional or savings provisions for better carrying out of the objectives of this Schedule.

THIRD SCHEDULE

[Sections 6 (2), 9 (3).]

Approved activities

1. Manufacturing of goods for export.
2. Warehousing, freight forwarding and customs clearance.
3. Handling of duty-free goods (transshipment, sorting, marketing, packaging, etc.).
4. Banking, stock exchange and other financial services, insurance and reinsurance.
5. Import of goods for special services, exhibitions and publicity.
6. International commercial arbitration services.
7. Activities relating to integrated Zones.
8. Other activities deemed appropriate by the Nigeria Export Processing Zones Authority

FOURTH SCHEDULE

[Section 12 (3).]

Duty free articles

1. Building materials.
2. Tools.
3. Plant.
4. Machinery.

5. Pipes.
6. Pumps.
7. Conveyor belts.
8. Other appliances and materials necessary for construction, alteration and repair of premises.
9. Capital and consumer goods, raw materials components of all articles intended to be used for the purpose of, and in connection with reconstruction, extension or repair of premises in a Zone or for equipping such premises and any other items approved by the Authority.

CHAPTER 05

OIL AND GAS EXPORT FREE ZONE ACT

ARRANGEMENT OF SECTIONS

Designation and establishment of the Oil and Gas Export Free Zone, etc.

SECTION

1. Designation and establishment of the Oil and Gas Export Free Zone.
2. Establishment of the Oil and Gas Export Free Zone Authority.
3. Establishment and membership of the governing board, etc.
4. Removal from office.
5. Functions of the Authority.

Staff of the authority

6. Appointment of the Managing Director, secretary and other employees, etc.
7. Vesting of property in the Authority.
8. Exemption from taxes.
9. Approval of enterprise to undertake approval activity.
10. Power to grant licence.
11. Payments for goods and services.
12. Import of goods into the Export Free Zone.
13. Persons not to enter the Export Free Zone without permission.
14. Prohibition of retail trade.
15. Special provisions relating to articles imported with custom and duty cessions.
16. Prohibition of storage of ammunition and dangerous explosives.
17. Export of goods from the Export Free Zone.
18. Incentives and related matters.
19. Enterprises to submit returns.

20. Work permit.
21. Fund of the authority.
22. Annual estimates, accounts, etc.
23. Enactments applicable in customs territory to apply.
24. Omission and non-compliance.
25. Regulations.
26. Short title.

SCHEDULE

Supplementary provisions relating to the authority

CHAPTER O5

OIL AND GAS EXPORT FREE ZONE ACT

An Act to establish the Oil and Gas Export Free Zone Authority.

[1996 No. 8.]

[Commencement]

[29th March, 1996]

Designation and establishment of the Oil and Gas Export Free Zone, etc.

1. Designation and establishment of the Oil and Gas Export Free Zone

- (1) The President hereby designates the Onne/Ikpokiri area of Rivers State as an export free zone, (in this Act referred to as “the Export Free Zone”).
- (2) The Export Free Zone established pursuant to subsection (1) of this section, shall be operated and managed by the Oil and Gas Export Free Zone Authority established by section 2 of this Act.

2. Establishment of the Oil and Gas Export Free Zone Authority

- (1) There is hereby established for the Oil and Gas Export Free Zone, an authority to be known as the Oil and Gas Export Free Zone Authority (in this Act referred to as “the Authority”).
- (2) The Authority shall be a body corporate, with perpetual succession and a common seal and may sue and be sued in its corporate name and shall be capable of acquiring, holding or disposing of any property movable or immovable for the purpose of carrying out its functions.

3. Establishment and membership of the governing body, etc.

- (1) There shall be for the Authority a governing board (in this Act referred to as “the Board”) which shall consist of the following members, that is-
 - (a) A chairman, who shall be appointed by the President, being a person who by reason of his ability, experience or specialised knowledge of export and investment promotion, commercial or economic matters is capable of making outstanding contributions to the functions of the Authority;
 - (b) One representative each of the following Ministries, that is-
 - (i) Finance;
 - (ii) Commerce;

- (iii) Industry;
 - (iv) Petroleum Resources;
 - (v) Justice;
- (c) The Managing Director of the Nigerian Ports Authority or his representative not below the rank of a Director in the civil service of the Federation;
- (d) The Comptroller-General of Customs or his representative;
- (e) One representative each of the following bodies, that is-
- (i) The Nigerian Chamber of Commerce, Industries and Mines and Agriculture;
 - (ii) The Corporate Affairs Commission;
 - (iii) The Manufacturers Association of Nigeria;
 - (iv) The Rivers State Government;
- (f) Two eminent and knowledgeable Nigerians who shall not be employed in the public service and shall be persons with vast practical experience in the field of industry, commerce, finance, export promotion and such other related fields to be appointed by the Minister; and
- (g) The Managing Director of the Authority.
- (2) A member of the Board other than *ex-officio* member shall hold office for a period of three years from the date of his appointment as a member and shall be eligible for reappointment for one further period of two years and no more.
- (3) Notwithstanding subsection (2) of this section, the president may, on the recommendation of the Minister, require any member of the Board to vacate his office if he is satisfied that it is not in the interest of the Authority or interest of the public that the member should continue in office.
- (4) A member of the Board other than an *ex-officio* member may, by notice in writing addressed to the Board, resign his appointment.
- (5) The supplementary provisions contained in the schedule to this Act shall have effect with respect to the proceedings of the Board and other matters relating to the Board.

4. Removal from office

- (1) If it appears to the Board that a member of the Board should be removed from office on grounds of misconduct or inability to perform the functions of his office, the Board shall, after consultation with the interests, if any, represented by that member, make recommendations to

that effect to the Minister and if the Minister approves the recommendations he may declare in writing, the office of that member vacant.

- (2) Without prejudice to subsection (1) of this section any member who is absent from two consecutive ordinary meetings of the Board shall file his explanation in writing with the secretary for consideration by the Board and if the explanation is not accepted by the Board, the Board shall recommend to the Minister that the member be removed from office and the Minister may declare, in writing, the office of that member vacant.

5. Functions of the Authority

- (1) In addition to any other functions conferred on the Authority by this Act, the functions and responsibilities of the Authority shall include-
 - (a) the administration of the Authority and management of the Export Free Zone;
 - (b) the grant of all requisite permits and licences to conduct approved enterprises within the Export Free Zone;
 - (c) the approval of development plans of the Authority and the Export Free Zone, the annual budgets in respect of infrastructure, administrative buildings, promotion of the Export Free Zone, the provision and maintenance of services and facilities;
 - (d) the establishment of customs, police, immigration and similar posts in the Export Free Zone;
 - (e) the supervision and co-ordination of the functions of various public and private sector organisations operating within the Export Free Zone and resolving any dispute which may arise amongst them; and
 - (f) the resolution of trade disputes between employers and employees in the Export Free Zone in consultation with the Federal Ministry of Employment Labour and Productivity.
- (1) The Authority shall have power to take over and perform such other functions being hitherto performed by the Nigerian Export Processing Zones Authority as they relate to the export of oil and gas from any of the Nigerian Export Processing Zones established by the Nigerian Export Processing Zone Act.

[Cap. N107.]

- (2) The Authority may, from time to time, prescribe the activities, which may be carried on in the Export Free Zone.

Staff of the Authority

6. Appointment of the Managing Director, secretary and other employees, etc.

- (1) There shall be for the Authority, a Managing Director who shall-
 - (a) be chief executive; and

- (b) be appointed by the President on the recommendation of the Minister.
- (2) The Managing Director shall be responsible for-
- (a) the preparation of plans, annual programmes and budget of the Authority;
 - (b) the recommendation to the Minister, of such bye-laws which may be applicable in the Export Free Zone;
 - (c) the implementation of approved plans, programmes and budget of the Authority; and
 - (d) the day-to-day administration of the Authority.
- (3) Without prejudice to the generality of subsection (1) of this section, the Authority shall have power to-
- (a) appoint a secretary who shall be qualified to practise as a legal practitioner in Nigeria and shall have been so qualified for not less than ten years;
 - (b) pay the employees such remuneration and allowances as it may, from time to time, determine;
 - (c) pay the employees such pensions and gratuities as are payable to persons of equivalent grades in the public service of the Federation.
- (4) The Authority may make staff regulations relating generally to the conditions of service of the employees of the Authority and without prejudice to the generality of the foregoing such regulations may provide for-
- (a) the appointment, promotion and disciplinary control of all employees of the Authority; and
 - (b) appeal by such employees against dismissal or other disciplinary measures and until such regulations are made, the regulations relating to the conditions of service of the officers in the civil service of the Federation and the provisions of the Pensions Act shall be applicable with such modifications as may be necessary to the staff of the Authority.
- [Cap. P4.]
- (5) Approved enterprises operating within the Export Free Zone shall make provisions for the pensions and gratuities for their employees.

7. Vesting of property in the Authority

The President or the Governor of a State respectively may, by order, transfer to the Authority, any property belonging to the Federal or State Government which appears to be necessary or expedient to the Authority in carrying out its functions under this Act and such property shall vest in the Authority by virtue of that order and without further assurance.

8. Exemption from taxes

Approved enterprises operating within the Export Free Zone shall be exempt from all Federal, State and local government taxes, levies and rates.

9. Approval of enterprise to undertake approved activity

- (1) Any enterprise which proposes to undertake an approved activity within the Export Free Zone, shall apply to the Authority in writing for permission to do so and shall submit such documents and information in support of the application, as the Authority may require from time to time.
- (2) Subject to the provisions of this Act, the Authority may grant, subject to such terms and conditions as it thinks fit, approval for enterprise to undertake the approved activity specified in its application brought under subsection (1) of this section.

10. Power to grant licence

- (1) The Authority may grant a licence for any approved activity in the Export Free Zone to an individual or business concern whether or not the business is incorporated in the customs territory.
- (2) The grant of a licence by the Authority shall constitute registration for the purpose of company registration within the Export Free Zone.
- (3) A body corporate licensed to operate within the Export Free Zone and undertaking approved activity shall notify the Authority of any purchase, assignment or transfer of shares in the body corporate, except where its shares are quoted and are freely transferable on any international stock exchange.
- (4) The Authority shall by order, from time to time, prescribe the regulations governing the Export Free Zone.

11. Payments for goods and services

- (1) Where an approved enterprise operating in the Export Free Zone supplies goods and services to customers within the customs territory, that enterprise shall be entitled to receive payment for such goods and services in foreign currency and for the purpose of such payment, the rules and regulations applicable to importation of goods and services into Nigeria and repatriation of the proceeds of sales or services shall apply.
- (2) Where a person within the customs territory supplies goods and services to approved enterprise established within the Export Free Zone, that person shall be entitled to receive payment for such goods or services in foreign currency and regulations applicable to export from Nigeria and the repatriation of proceeds from sales or services shall apply.

12. Import of goods into the Export Free Zone

- (1) The authority and any approved enterprise shall be entitled to import into the Export Free Zone, free of customs duty, any capital goods, consumer goods, raw materials, components or

articles intended to be used for the purpose of and in connection with an approved activity, including any article for the construction, alteration, reconstruction, extension or repair of premises in the Export Free Zone or for equipping such premises.

- (2) For the purpose of this section, articles for equipping premises shall be deemed to include equipment for offices and other ancillary facilities necessary for the proper administration of the premises and for the health, safety, hygiene and welfare of the premises and for persons employed therein.
- (3) All goods brought into the Export Free Zone shall be consigned-
 - (a) to the Authority or to an approved enterprise and the goods may, with the approval of the authority, be transferred from one approved enterprise to another or from the Authority to an approved enterprise or from an approved enterprise to the Authority; and
 - (b) without prejudice to the provisions of subsection (2) of this section, to a bank acting on behalf of any party to a transaction involving the Authority or an approved enterprise.
- (4) The Authority may take such steps as it deems necessary to preserve goods within the Export Free Zone, whether by moving the goods from one place to another or by storing the goods and where any expenses are incurred by the Authority in so doing, the owner or consignee of the goods shall reimburse the Authority for the expenses.
- (5) Subject to the provisions of this Act and any regulations made thereunder, goods brought into the Export Free Zone pursuant to this section may-
 - (a) unless otherwise directed by the Authority, be stored, sold, exhibited, broken up, packed, graded, cleaned, marked, re-marked, loaded, unloaded, re-loaded, divided, mixed, separated or otherwise manipulated; or
 - (b) be worked, processed or re-processed or otherwise manipulated or manufactured; or
 - (c) be consumed if the goods are meant for consumption in the Export Free Zone, unless otherwise directed by the Authority; or
 - (d) subject to subsection (6) of this section, be removed from the Export Free Zone or sent into the customs territory, whether as originally packed or otherwise; or
 - (e) subject to any enactment pertaining thereto, be destroyed.
- (6) Where any goods which are dutiable on entry into the customs territory are sent from the Export Free Zone into the customs territory, the goods shall be subject to the provisions of the Customs, Excise Tariff, etc. (Consolidation) Act and any regulations made thereunder, and if the goods are intended to be disposed of in the customs territory, shall not be removed from the Export Free Zone unless-

[Cap. C49.]

- (a) the consent of the Authority has been obtained; and

- (b) the relevant customs authorities are satisfied that all import restrictions relevant thereto have been complied with and all duties payable in connection with the importation thereof into the customs territory have been paid.
- (7) Samples of goods being taken into customs territory shall be subject to the provisions of subsection (5) of this section, except in cases where the relevant customs authority is satisfied that such goods are of no commercial value.
- (8) Where goods are brought from the customs territory into the Export Free Zone for the purpose of an approved activity, the goods shall be deemed to be exported.
- (9) The president shall appoint for the Export Free Zone, an inspecting agent who shall be charged with responsibility of inspecting goods imported from the Export Free Zone into Nigeria for use by an approved enterprise within the Export Free Zone.

13. Persons not to enter the Export Free Zone without permission

- (1) No person shall, without the prior permission of the Authority, enter, remain in or reside in the Export Free Zone.
- (2) Any person who contravenes the provisions of subsection (1) of this section shall have his permit revoked by the Authority.

14. Prohibition of retail trade

- (1) No retail trade shall be conducted within the Export Free Zone without the prior approval of the Authority and which may be subject to such terms and conditions as may be imposed, from time to time, by the Authority.
- (2) Any person who contravenes the provisions of subsection (1) of this section or of a term or condition imposed pursuant to that subsection shall have his license revoked by the Authority.

15. Special provisions relating to articles imported with custom duty cessions

- (1) An approved enterprise which imports into the Export Free Zone an article with a benefit in respect of customs duty under the provisions of this Act shall-
 - (a) keep such records of the articles so imported in such forms and containing such particulars as may be required by the Authority;
 - (b) cause the articles to be marked with such mark and in such manner as may be required by the Authority;
 - (c) permit the Authority or a person authorised by the Authority at all reasonable times-
 - (i) to inspect the records relating to those articles; and
 - (ii) to have access to any factory, warehouse, assembly plant or other premises under the

control of the approved enterprise for the purpose of examining the articles which the Authority believes to be therein and of satisfying itself of the accuracy of the particulars in relation to the article contained in such records.

- (2) Any person who contravenes the provisions of subsection (1) of this section is guilty of an offence.

16. Prohibition of storage of ammunition and dangerous explosives

- (1) Notwithstanding any other provision of this Act, the following goods shall not be imported, taken into or stored in the Export Free Zone-
- (a) firearms and ammunition, other than by members of the Nigeria Police Force, the Armed Forces of the Federation or any of the Security Agencies employed to work in the Export Free Zone in the course of their duties or by such other persons as may be authorised by the Authority;
 - (b) dangerous explosives, without prior approval of the Authority;
 - (c) petrol, inflammable materials, hazardous cargoes or oil fuels, other than in such quantities and on such terms and conditions as may be prescribed by the Authority;
 - (d) goods which the Authority by Order has imposed specific or absolute prohibition on their importation into the Export Free Zone.
- (2) Any person who contravenes the provisions of subsection (1) of this section is guilty of an offence.

17. Export of goods from the Export Free Zone

Export of goods from the Export Free Zone to the custom territory shall, except as otherwise prescribed by or pursuant to this Act, be subject to the same customs and licensing requirements as apply to goods imported from other countries.

18. Incentives and related matters

- (1) Approved enterprises within the Export Free Zone shall be entitled to the following incentives-
- (a) exemption from taxes, levies, duties and foreign exchange regulations in accordance with section 8 of this Act, subject always to the provisions of the Banks and Other Financial Institutions Act, 2020; provided that all companies registered and operating in the Zone shall comply with the provisions of Section 55 (1) of the Companies Income Tax Act and render returns in the manner prescribed therein, to the Federal Inland Revenue Service and all penalties prescribed in the Companies Income Tax Act and the Federal Inland Revenue Service (Establishment) Act that may apply in the event of noncompliance with the said section 55 (1) of the Companies Income Tax Act shall apply to such companies in the event of default to comply;

[2020 No. 1, s. 59]

- (b) repatriation of foreign capital investment in the Export Free Zone at any time with capital appreciation of the investment;
 - (c) remittance of profits and dividends earned by foreign investors in the Export Free Zone;
 - (d) no import or export licences shall be required;
 - (e) up to a minimum of 25 percent of production may be sold in the customs territory against a valid permit, and on payment of appropriate duties;
 - (f) rent free land at construction stage, thereafter rent shall be as determined by the authority;
 - (g) up to 100 per cent foreign ownership of business in the Export Free Zone allowable;
 - (h) foreign managers and qualified personnel may be employed by companies operating in the Export Free Zone.
- (2) The Authority shall be the only agency qualified to-
- (a) give all approvals; and
 - (b) cancel all licenses.
- (3) The Authority shall simplify all procedure necessary for authorisation of investments in the Export Free Zone and state by order from time to time its requirements for the grant of authorisations for investments in the Export Free Zone.
- (4) Operations within the Export Free Zone shall commence on the date when the construction of the perimeter fence and gate of the Export Free Zone have been completed and the Authority has assumed duties.
- (5) There shall be no strikes or lockouts for a period of 10 years following the commencement of operations within the Export Free Zone and any trade dispute arising within the Export Free Zone shall be resolved by the Authority.

19. Enterprises to submit returns

An approved enterprise shall submit to the Authority at such intervals as may be prescribed, such statistical data, and such information and returns as regards the sales and purchases and other operations of the enterprise as the Authority may require or as may be prescribed, from time to time.

20. Work permit

Where a person who is a non-Nigerian citizen is employed by the Authority or by an approved enterprise established in the Export Free Zone, upon application by the enterprise for a licence to establish itself within the Export Free Zone or at any time thereafter, the enterprise shall apply on behalf of the non-Nigerian citizen, direct to the Authority for the purpose of immigration and

employment permits, in such manner as may be prescribed by the Authority.

21. Fund of the Authority

- (1) The Authority shall establish and maintain a fund which shall consist of-
 - (a) all moneys received from the Federal Government;
 - (b) proceeds from all activities, services and operations of the Authority;
 - (c) grants, gifts and donations made to the Authority; and
 - (d) such other sum as may accrue, from time to time, to the Authority.
- (2) The Authority shall from time to time, apply the proceeds of the fund established pursuant to subsection (1) of this section-
 - (a) to the cost of administration of the Authority;
 - (b) to the payment of the salaries, fees or other remuneration or allowances, pensions and gratuities payable to the officers and employees of the Authority;
 - (c) for reimbursing members of the Board or of any committee set up by the Board for such expenses as may be expressly authorised by the Authority in accordance with the rates approved by the President;
 - (d) for the maintenance of any property vested in the Authority; and
 - (e) for investment, maintenance of the Export Free Zone, marketing, promotion, training, research and similar activities.

22. Annual estimates, accounts, etc.

- (1) The Authority shall, not later than 31st October in each year, submit to the Minister an estimate of its expenditure and income (including payments into the fund of the authority) during the next succeeding year.
- (2) The Authority shall keep proper accounts in respect of each year (and proper records in relation thereto) and shall cause its accounts to be audited within six months after the end of each year by auditors appointed from the list and in accordance with the guidelines supplied by the Auditor-General for the Federation.

23. Enactments applicable in customs territory to apply

- (1) Except as provided under this Act, an enactment applicable in a customs territory shall apply within the Export Free Zone.
- (2) The Minister may, by order published in the *Gazette*, modify the application of any enactment which is made applicable in the Export Free Zone by subsection (1) of this section, where the

enactment concerned restricts or interferes with the smooth running of the Export Free Zone or operating of licences therein.

24. Omission and non-compliance

- (1) Every omission or neglect to comply with and every act done or attempted to be done contrary to the provisions of this Act or any regulations made thereunder shall be an offence and in respect of any such offence for which no penalty is expressly provided the offender shall be liable on conviction to a fine of ₦100,000 or to imprisonment for a term of three months or to both such fine and imprisonment.
- (2) Whoever attempts to commit any offence punishable under this Act or any regulations made thereunder or abets the commission of such offence shall be punished with the punishment provided for such an offence.
- (3) Where a body corporate is guilty of an offence under this Act, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity; he, as well as the body corporate, is guilty of that offence and liable to be proceeded against and punished accordingly.

25. Regulations

The Authority may, with the approval of the Minister make regulations for the proper implementation of this Act.

26. Interpretation

In this Act, unless the context otherwise requires-

“approved activities” means activities specified and approved by the Authority;

“approved enterprise” means any enterprise established within the Export Free Zone approved by the Authority;

“Authority” means the Oil and Gas Export Free Zone Authority established by section 2 of this Act;

“member” means a member of the Board and includes the chairman;

“Minister” means the Minister charged with responsibility for matters relating to trade.

27. Short title

This Act may be cited as the Oil and Gas Export Free Zone Act.

SCHEDULE

[Section 3 (5).]

Supplementary provisions relating to the Authority

Proceedings of the Board

1.

- (1) Subject to this Act and to section 26 of the Interpretation Act, the Board may make standing orders regulating the proceedings of the Authority or of any committee thereof.
[Cap. 123.]

- (2) The quorum of the Board shall be eight and the quorum of any committee of the Board shall be as may be determined by the Board, from time to time.

2.

- (1) The Board shall meet not less than four times in each year and, subject, thereto, the Board shall meet whenever it is summoned by the chairman, and if the chairman is required to do so by notice given to him by not less than three other members, he shall summon a meeting of the Board to be held within fourteen days from the date on which the notice is given.
- (2) At any meeting of the Board the chairman shall preside, but if he is absent, the members present at the meeting shall appoint one of their number to preside at the meeting.
- (3) Where the Board desires to obtain the advice of any person on a particular matter, the Board may co-opt him as a member for such period as it thinks fit:

Provided that a person who is a member by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the Board and shall not count towards the quorum.

Committees

3.

- (1) The Board may appoint one or more committees to carry out on behalf of the Board such of its functions as the Authority may determine.
- (2) A committee appointed under this paragraph shall consist of such number of persons (not necessarily members of the Board) as may be determined by the Board; and a person other than a member of the Board shall hold office on the committee in accordance with the terms of his appointment.

Miscellaneous

4.

- (1) The fixing of the seal of the Authority shall be authenticated by the signature of the chairman and of any other member authorised generally or specially by the Board to act for that purpose.
- (2) Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the Board by the chairman and the Managing Director or any person authorised generally or specially by the Authority to act for that purpose.

5. Members of the Board shall be paid out of the moneys at the disposal of the Board such remuneration, fee or allowances in accordance with such scales as may be approved, from time to time, by the Minister.

6. The validity of any proceedings of the Board or of a committee thereof shall not be adversely affected by any vacancy in the membership of the Board or of a committee or by the defect in the appointment of any member of the Board or committee or by reason that a person not entitled to do so took part in the proceedings.

7.

(1) A member of the Board who is-

- (a) directly or indirectly interested in any company or enterprise the affairs of which are being deliberated upon by the Authority; or
- (b) is interested in any contract made or proposed to be made by the Authority,

shall as soon as possible after the relevant facts have come to his knowledge disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under subparagraph (1) of this paragraph, shall be recorded in the minutes of the meeting of the Board and the member shall-

- (a) not take part after such disclosure in any deliberation or decision of the Board with regard to the subject matter in respect of which his interest is thus disclosed;
- (b) be excluded for the purpose of constituting a quorum of the Board for any such deliberation or decision.

CHAPTER P8

PERSONAL INCOME TAX ACT

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CHAPTER P8

PERSONAL INCOME TAX ACT

An Act to impose income tax on individuals, communities and families and on executors and trustees; and to provide for the assessment and collection and administration of the tax.

[1993 No. 104]
[Commencement]

[25th August, 1993]

PART I

Imposition of tax and income chargeable

1. Imposition of tax

There is hereby imposed a tax on the income-

- (a) of individuals, communities and families; and
- (b) arising or due to a trustee or estate,

which shall be determined under and be subject to the provisions of this Act.

[1996 No. 30.]

2. Persons on whom tax is to be imposed

[2011 No. 20.]

- (1) Tax of an amount to be determined from the Table set out in the Sixth Schedule (in this Act referred to as “income tax”) shall be payable for each year of assessment on the total income of-

[Sixth Schedule]

- (a) every individual other than persons covered under paragraph (b) of this subsection or corporation sole or body of individuals deemed to be resident for that year in the relevant State under the provisions of this Act; and
- (b) the following other persons, that is-
 - (i) persons employed in the Nigerian Army, the Nigerian Navy, the Nigerian Air Force, the Nigerian Police Force other than in a civilian capacity;
 - (ii) officers of the Nigerian Foreign Service;

(iii) every resident of the Federal Capital Territory, Abuja; and

(iv) a person resident outside Nigeria who derives income or profit from Nigeria.

(1A) Notwithstanding anything in the principal Act, the relevant tax authority in a State shall have powers to collect tax under this Act from itinerant workers.

[2011 No. 20.]

Individuals

(2) In the case of an individual, other than an itinerant worker and persons covered under paragraph (b) of subsection (1) of this section, tax for any year of assessment may be collected only by the State in which the individual is deemed to be resident for that year under the provisions of the First Schedule to this Act and in the case of persons referred to in subsection (1) (b) of this section, tax shall be collected by the Federal Inland Revenue Service.

[First Schedule.]

Itinerant workers

(3) In the case of an itinerant worker, tax may be collected for any year by any State in which the itinerant worker is found during the year:

Provided that:

- (a) in an assessment for any year upon an itinerant worker credit shall be given against the tax payable, but not exceeding the amount thereof, for any income tax already paid by him to any other tax authority for the same year; and
- (b) collection of so much of any tax imposed in a territory on an itinerant worker for a year of assessment as remains unpaid on the itinerant worker leaving that territory during that year shall remain in abeyance during his absence from that territory, and if he returns to that territory having during his absence paid tax in some other territory for that year, credit shall be given against any unpaid tax in the first mentioned territory, but not exceeding that unpaid amount, for the tax paid in that other territory.

Communities

(4) In the case of a village or other indigenous communities, tax may be collected for any year only by the law of the territory in which that community is to be found and the tax may be charged on-

- (a) the estimated total income of all its members;
- (b) the estimated total income of those of its members whose income it is impracticable in the opinion of the relevant tax authority to assess individually; or

- (c) the amount of any communal income which, in the opinion of the relevant tax authority in relation to such community, it is impracticable to apportion with certainty between its members.

Families

- (5) In the case of income of a family recognised under any law or custom in Nigeria as families income, in which the several interests of individual members of the family are indeterminate or uncertain, tax may be collected only by the territory in which the member of that family who customarily receives that income in the first instance in Nigeria usually resides.

Trustees

- (6) In the case of income arising to a trustee of any settlements or trusts, or estates or to an executor of any estate of a deceased person, tax may only be collected by the territory of which the tax authority is the relevant tax authority in relation to such settlement, trust or estate and to the extent provided in the Second Schedule to this Act.

[Second Schedule.]

- (7) Nothing in this section shall be construed as imposing liability to tax on the personal emoluments of any person serving as other rank and accordingly any other enactment or law imposing tax on the income or individuals shall not apply:

Provided that where any other income accrues to a person serving as other rank (not being income by way of personal emoluments) that income shall be liable to tax under this Act or under any relevant enactment or law.

- (8) In this section-

“**other rank**” has the meaning assigned thereto by the Armed Forces Pensions Act; and
[Cap. A23.]

“**personal emoluments**” means wages or salaries and includes allowances including benefits in kind, gratuities, superannuation or pension schemes and any other income derived solely by reason or employment as other rank.

[2011 No. 20]

3. Income chargeable

- (1) Subject to the provisions of this Act, tax shall be payable for each year of assessment on the aggregate amounts each of which is the income of every taxable person, for the year, from a source inside or outside Nigeria, including, without restricting the generality of the foregoing-
 - (a) gain or profit from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;
 - (b) any salary, wage, fee, allowance or other gain or profit from employment including

compensations, bonuses, premiums, benefits or other perquisites allowed, given or granted by any person to any temporary or permanent employee other than so much of any sums as or expenses incurred by him in the performance of his duties, and from which it is not intended that the employee should make any profit or gain;

[2011 No. 20.]

- (i) medical or dental expenses incurred by the employee;
 - (ii) the cost of any passage to or from Nigeria incurred by the employee;
 - (iii) any sum paid in respect of the maintenance or education of a child if any provision of this Act provides that any sum received by the employee during a year of assessment shall be deducted from the personal reliefs to be granted to him for the next following year;
 - (iv) so much of any amount of rent the employee is treated as being in receipt equal to the annual amount deemed to be incurred by the employer under section 4 of this Act;
 - (v) so much of any amount of rent the employee is treated as having received under the provisions of section 5 of this Act;
 - (vi) so much of the amount of rent subsidy or rent allowance paid by the employer, to or on account, for the employee not exceeding ₦100,000 per
[1999 No. 30.]
 - (vii) meal subsidy or meal allowance, subject to a maximum of ₦5,000 per annum; [1999 No. 30.]
 - (viii) utility allowance of ₦10,000 per annum;
[1999 No. 30.]
 - (ix) entertainment allowance of ₦6,000 per annum;
 - (x) leave grant, subject to a maximum of ten per cent of annual basic salary;
[1999 No. 30.]
- (c) gain or profit including any premiums arising from a right granted to any other person for the use or occupation of any property;
- (d) dividend, interest or discount;
- (e) any pension, charge or annuity;
- (f) any profit, gain or other payment not falling within paragraphs (a) to (e) inclusive of this subsection.
- (g) For the purpose of this section-

- (a) **“allowance”** includes any sum paid or payable in respect of expenses and any sum put by an employer at the disposal of an employee and paid away by the employee;
- (b) **“income”** includes any amount deemed to be income under this Act;
- (c) the gains or profits arising from a right granted to any other person for the use or occupation of property under any lease or assignment thereof, being rent paid or expressed to be paid in advance, shall be deemed to accrue to the recipient from day to day over the period for which such rent has been paid:

Provided that where the period exceeds five years, the whole of the rent so paid or expressed to be paid in advance shall be treated as accruing evenly from day to day over the five years commencing on the first day of that said period;

- (d) **“employment”** includes any service rendered by any person in return for any gains or profits;
- (e) **“dividend”** means-
 - (i) in relation to a company not being in the process of being wound up or liquidated, any profits distributed, whether such profits are of a capital nature or not, including an amount equal to the nominal value of bonus shares, debentures or securities awarded to the shareholder; and
 - (ii) in relation to a company that is being wound up or liquidated, any profits distributed, whether in money or money's worth or otherwise, other than those of a capital nature earned before or during the winding up or liquidation.

4. General provisions as to valuation of benefits

- (1) Where an employer incurs any expense in the provision of any benefit or perquisite in accordance with section 3 (1) (b) (vi) of this Act, other than the provision of living accommodation to which section 5 of this Act relates, the following provisions shall apply-
 - (a) in any case where any assets which continue to belong to an employer is used wholly or partly in the making of such provisions, he shall be deemed to incur annual expenses in connection therewith of an amount equal to five per cent of the amount expended by him in acquiring the asset, but if that amount cannot be so ascertained, five per cent of the market value of the asset at the time of the acquisition, as determined by the relevant tax authority;
 - (b) in a case where any sum by way of rent or hire is payable by the employer in respect of any such asset, he shall be deemed to incur an annual expense in connection with the making of such provisions equal to the annual amount of the rent or hire expended by him on the asset; and
 - (c) in any case, the employer shall be deemed to incur annual expense in connection with the

making of such provisions equal to the annual amount expended thereon by him.

- (2) The employee shall be treated as being in receipt (in addition to any other emolument) of emolument equal to the annual amount so deemed to be incurred by the employer under subsection (1) of this section reduced by so much (if any) of the annual expense as is made good to the employer by the employee.
- (3) The provisions of subsections (1) and (2) of this section shall not apply to any expenses incurred by an employer-
 - (a) in connection with the provision of meals in any canteen in which meals are provided for the staff generally or of luncheon vouchers for his employees if those vouchers are not assignable by an employee to whom they are issued;
 - (b) in the provision of any uniform, overall or other protective clothing;
 - (c) where those expenses are reasonable removal expenses which may or may not include a temporary subsistence allowance incurred by the employer by reason of a change of the employee's employment which requires such employee to change his place of residence, and the employee shall not be treated as being in receipt of any remuneration in respect of the allowance.
- (4) A reference in this section to expenses incurred in connection with any matter includes a reference to a proper proportion of any expenses incurred partly in connection with the matter.
- (5) A reference in this section to anything provided for an employee shall, unless the reference is expressly to something provided for the employee himself, be construed as including a reference to anything provided for the spouse, family, servant, dependant or guest of that employee by the employer.

5. Valuation as to living accommodation

- (1) Where any premises in Nigeria are made available to the occupier by reason of his or his Wife's holding an office or employment and-
 - (a) the occupier pays no rent for the premises; or
 - (b) the rent which the occupier pays for the premises is less than the annual value of the premises,

the employee shall be treated as being in receipt (in addition to any other emoluments) of emoluments at an annual rate equal to the annual value of the premises, as determined under subsection (3) of this section, reduced by the annual amount of rent which the occupier pays for the premises.

- (1) Subsection (1) of this section shall apply to an occupier being a woman as it applies to an occupier being a man with the substitution of "her husband" for "his wife" and that subsection shall accordingly be so construed.

(2) In this section, “**the annual value of the premises**” means-

- (a) in relation to premises subject to any law governing assessment of local rates, the annual value of the premises as determined for purposes of local rates under that law;
- (b) in any other case, the annual value as determined by the relevant tax authority, and a reference in this section to annual value shall include a reference (where applicable) to such proper proportion of the annual value-
 - (i) in relation to a period of occupation within a year; or (ii) in relation to the part of the premises occupied; or
 - (ii) in relation to both a period of occupation within a year and the part of the premises occupied, as may be determined by the relevant tax authority.

6. Business or trade only partially carried on or deemed to be carried on in Nigeria

Where an individual, an executor, or a trustee, outside Nigeria carries on a trade or business of which only part of the operations are carried out in Nigeria, the gains or profits of the trade or business shall be deemed to be derived from Nigeria to the extent to which such gains or profits are not attributable to that part of the operations carried on outside Nigeria:

Provided that-

- (a) the individual, executor or trustee does not have a fixed base in Nigeria from which he carries on such trade or business;
- (b) the individual, executor or trustee does not habitually operate a trade or business through a person in Nigeria authorised to conclude contracts on his behalf or on behalf of some other persons related to him or both of whom are controlled by some other person or does not habitually maintain a stock of goods or merchandise in Nigeria from which deliveries are regularly made on his behalf;
- (c) the trade or business in Nigeria does not involve a single contract for surveys, deliveries, installations or construction;
- (d) the trade or business is not between persons both of whom are controlled by some other person and such that conditions are made or imposed between such persons in their commercial or financial relations which in the opinion of the relevant tax authority is deemed to be artificial or fictitious.

6A. Profits of a trade or business of furnishing of services carried out outside Nigeria

- (1) Notwithstanding the provisions of section 6 of this Act, where an individual, executor, or trustee outside Nigeria carries on a trade or business that comprises the furnishing of technical, management, consultancy or professional services to a person resident in Nigeria, the gains or profits of the trade or business shall be deemed to be derived from and taxable in Nigeria to the extent that the individual, executor or trustee has significant economic presence in Nigeria-

Provided that the withholding tax applicable to income pursuant to this Act shall be the final tax on the income of a non-resident recipient who does not otherwise fall within the scope of section 6 of this Act.

[2020 No. 1, s. 25]

- (2) For the purpose of this section, the Minister may by Order, determine what constitutes the significant economic presence of a non-resident individual, executor or trustee.

[2020 No. 1, s. 25]

7. Relevant tax authority may assess and charge tax on the turnover of a business, etc.

- (1) Where, in respect of any business carried on by a person it appears to the relevant tax authority that for any year of assessment, the business produces either no assessable income or an assessable income which in the opinion of the relevant tax authority is less than might be expected to arise from that business or, as the case may be, the true amount of the assessable income of that person from the business cannot be readily ascertained, the relevant tax authority may for that year of assessment, in respect of that business, and notwithstanding any other provision of this Act-
- (a) if the whole of the operations of the business are carried on in Nigeria, assess and charge the person carrying on the business on such fair and reasonable percentage of the turnover of the business, as the relevant tax authority may determine;
- (b) if that person is a non-resident who-
- (i) has a fixed base from where he carried on such business, assess and charge that person on such a fair and reasonable percentage of the turnover attributable to that fixed base;
 - (ii) operates a business through a person authorised to conclude contracts on his behalf or on behalf of some person related to him or both of whom are controlled by some other person or operates a business through a person who regularly makes deliveries from a stock of goods or merchandise habitually held in Nigeria on his behalf, assess and charge that person on a fair and reasonable percentage of the turnover of the business carried on through that person;
 - (iii) operates a business in Nigeria which involves a single contract for surveys, deliveries, installation or construction, assess and charge that person on a fair and reasonable percentage of the contract.
- (2) The provisions of this Act as to notice of assessment, additional assessment, appeal and other proceedings shall apply to an assessment or additional assessment made under this section.
- (3) In this section-
- (a) “**business**” includes a trade, profession or vocation;

- (b) “**person**” in relation to the carrying on of a business, has the meaning assigned to it by section 108 of this Act but does not include a company.

8. Partnership

- (1) The gains or profits from a partnership of a partner therein shall be the sum of-
- (a) any remuneration, interest on capital, or the cost of passages to or from Nigeria wholly or mainly undertaken for the purpose of leave or recreation, which is charged in the partnership accounts in respect of that partner; and
 - (b) his share in the income of the partnership, computed in accordance with the provisions of this Act after the deduction of charges to which paragraph (a) of this subsection applies in respect of all the partners but before the deduction of any other expenses of the partnership referable to a partner which would have been private or domestic expenditure within the meaning of subsection (1) (a) of section 21 of this Act if incurred directly by that partner.
- (2) When the income computed under paragraph (a) of this subsection results in a loss, the partner’s share therein shall be deducted from his gains or profits ascertained under the provisions of subsection (1) (b) of this section and he shall be deemed to have incurred a loss in the trade or business of partnership to the extent, if any, by which the deductible share exceeds those gains or profits.
- (3) For the purpose of subsection (1) of this section, the share of a partner in the computed income of a partnership shall be such proportion of that computed income as would accrue to him under the provisions of the partnership agreement if that computed income were wholly apportionable between the partners within the terms of the agreement, or where the computed income results in a loss, such proportion of that loss as would be chargeable to him if that loss falls to be allocated between the partners in the terms of the agreement.
- (4) The amount of the gains or profits or loss of a partner, ascertained under the foregoing provisions of this section, of any period, shall be deemed for all purposes of this Act to be his ascertained income or loss of that period from a trade, business, profession or vocation carried on by him during that period, and the provisions of Part III of this Act, other than paragraph (g) of section 21 of this Act, shall not apply to that partner with respect to the income or loss.
- (5) The determination of the income or loss from a partnership or a partner therein shall be made by the relevant tax authority in relation to that partnership, and where any partner is taxable for a year of assessment in the territory of some other authority, the relevant tax authority shall supply to that other authority particulars of that determination.
- (6) An appeal against an assessment by any individual in so far as it relates to any partnership income or loss, shall lie only to the body of Appeal Commissioners or court specified for income tax purpose in a law of the territory of which the tax authority is the relevant authority in relation to that partnership.
- (7) For the purposes of paragraph 6 of the First Schedule to this Act, the income of a partner from a partnership in Nigeria shall be deemed to be derived from the territory of the relevant tax authority in relation to that partnership.

[First Schedule.]

- (8) The partnership, employee or agent in charge of the principal office or place of business of a partnership in Nigeria shall without notice or demand thereof register or cause to be registered with the relevant tax authority, a certified copy of the partnership deed or, where no written deed is in existence, particulars of any written or oral agreement under which the partnership is currently established and where any such particulars, have been so registered, notice of any subsequent change therein agreed between the partners shall be similarly registered with that tax authority within thirty days of the agreement.
- (9) Where the particulars of any partnership have been registered under the provisions of subsection (8) of this section, the computation under this section of the gains or profits of a partner therein may be made by the relevant tax authority on the basis of those particulars as they apply at any relevant time and in the event of failure by a partnership to comply with any demand made under the foregoing subsection, notwithstanding the provisions of subsection (3) of this section, tax may be assessed and charged by the relevant tax authority as though the whole gains or profits of such partnership accrued to any individual partner therein or were divisible between any partner therein as may appear just and reasonable to the tax authority.

9. Agricultural, etc., profit

The gain or profit of an individual from any land used by him for agricultural purposes or from livestock shall, unless the relevant tax authority is satisfied to the contrary, be deemed to be the gain or profit which would be realised by him if the land were cultivated or used or the livestock were dealt with, as the case may be, in the manner and up to the average standard of cultivation, use or practice relating to the use of the land or the dealing with livestock prevailing in the neighbourhood.

10. Employment

- (1) The gain or profit from an employment shall be deemed to be derived from Nigeria if-
- (a) the duties of the employment are wholly or partly performed in Nigeria, unless-
- (i) the duties are performed on behalf of an employer who is in a country other than Nigeria and the remuneration of the employee is not borne by a fixed base of the employer in Nigeria; and
[2011 No. 20.]
- (ii) the employee is not in Nigeria for a period or periods amounting to an aggregate of 183 days (inclusive annual leave or temporary period of absence) or more in any twelve month period commencing in a calendar year and ending either within that same year or the following year; and
[2011. No. 20.]
- (iii) the remuneration of the employee is liable to tax in that other country under the provisions of the avoidance of double taxation treaty with that other country;
[2011 No. 20.]

(b) the employer is in Nigeria, or has a fixed base in Nigeria.

[2011 No. 20]

- (2) Notwithstanding the provisions of paragraph (b) of subsection (1) of this section, the gains or profits from an employment by a Government in Nigeria shall be deemed to be derived from Nigeria wherever the remuneration is paid if the employee performs the duties of that employment in a country other than Nigeria which country under an agreement or diplomatic usage exempts the employee from tax on those gains or profits.
- (3) The gain or profit from any employment exercised in Nigeria shall be deemed to be derived from Nigeria whether the gains or profits from the employment are received in Nigeria or not.
- (4) The gains or profits from any employment, the duties of which are wholly or mainly performed in Nigeria, shall be deemed to be derived from Nigeria during any period of leave of the employee from the employment, and any period of his temporary absence on duty from Nigeria.

[Former subsection (5) deleted by 2011 No. 20.]

- (5) Notwithstanding any provision of this section, the gains or profits of an individual from any employment as a seafarer, other than any such employment in the Nigerian Navy or the Nigerian Ports Authority, shall be deemed to be derived from Nigeria only during any period in which the individual is serving under articles which he had signed in Nigeria or is performing stand-by duty on board a ship preparatory to his signing articles in Nigeria.

11. Tax credit allowable against tax payable on income derived from outside Nigeria

Notwithstanding the provisions of section 3 (1) of this Act, where a resident derives income from a source outside Nigeria and the income is brought into Nigeria through Government approved channels, he shall be allowed a tax credit against the tax payable by him but the tax credit shall not exceed the proportion of his total tax for the year of assessment which that income derived from outside and brought into Nigeria bears to his aggregate income chargeable to tax in Nigeria.

12. Nigerian dividends

- (1) The income from a dividend distributed by a Nigerian company shall be deemed to be derived from Nigeria, and shall be the gross amount of that dividend before deduction of any tax which the company is required to deduct on payment thereof under the provisions of any law in force in Nigeria at the relevant time imposing taxation on the profits of companies.
- (2) Any amount of the undistributed profit of a Nigerian company which is treated as distributed under the provisions of any law in force in Nigeria imposing tax on the profits of companies shall, for the purpose of this Act, be deemed to be income from a dividend accruing to any person who is a shareholder in the company in proportion to his share in the ordinary capital thereof at the relevant time, and the income from the dividend to be taken for assessment in his hands shall be his due proportion thereof increased by such amount as may be specified by the relevant tax authority in respect of tax deemed to be deducted at source.

- (3) The income from a dividend distributed by a Nigerian company shall be deemed to arise on the day on which payment of that dividend becomes due.

13.Foreign income

The income from a dividend paid by a company other than a Nigerian company, or from any other source outside Nigeria, shall be the amount of that income brought into or received in Nigeria, provided that, if the income arose in a country to which section 39 this Act applies, the amount of that income to be taken for assessment shall be the amount computed under subsection (5) of section 39 of this Act.

14.Interest

The income from any interest on money lent by an individual or an executor, or a trustee, outside Nigeria to a person in Nigeria (including a person who is resident or present in Nigeria at the time of the loan) shall be deemed to be derived from Nigeria if-

- (a) there is liability to payment in Nigeria of the interest regardless of what form the payment takes and wherever the payment is made;
- (b) the interest accrues in Nigeria to a foreign company or person regardless of what form the payment takes and wherever the payment is made.

15.Territory in which dividend or interest paid by a Nigerian company arises

Where a dividend or interest is distributed or paid by a Nigerian company, the dividend or interest, as the case may be, whenever necessary for the purpose of the First Schedule to the Act, shall be deemed to be derived from the territory in which the recipient of the dividend or interest resides or, where the recipient is not resident in Nigeria, the person shall be deemed to be a person to whom section 2 (1) (h) (iv) applies.

[First Schedule.]

16.Settlement, trusts and estates

The income of an individual or of a trustee or executor from a settlement, trust, or estate of a deceased person, made, created or administered in Nigeria, or in the case of settlement or trust made, created or administered in Nigeria, shall be ascertained in accordance with the provisions of the Second Schedule to this Act.

[Second Schedule.]

17.Artificial transactions

- (1) Where a tax authority is of opinion that any disposition is not in fact given effect to, or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, the tax authority may disregard the disposition or direct that such adjustments shall be made as respects the income of an individual, an executor or a trustee, as the tax authority considers appropriate so as to counteract the reduction of liability to tax effected, or reduction which would otherwise be effected by the transaction.

- (2) Where it appears that the interests of more than one tax authority are affected thereby, the exercise of any power conferred on a tax authority by subsection of this section shall be performed by the relevant tax authority alone and any decision or direction of the relevant tax authority under this section shall be binding on all tax authorities.
- (3) For the purposes of this section-
 - (a) “**disposition**” includes any trust, grant, covenant, agreement or arrangement;
 - (b) transactions between persons one of whom either has control over the other or in case of individuals who are related to each other or between persons both of whom are controlled by some other person, shall be deemed to be artificial or fictitious if in the opinion of the tax authority those transactions have not been made on terms which might fairly have been expected to have been made by independent persons engaged in the same or similar activities dealing with one another at arm’s length.

18. Certain appeals

An appeal with respect to assessment of income arising from any decision or direction of the relevant tax authority under subsection (2) of section 17 of this Act, shall lie only to the Federal High Court at the instance of the person in whose hand that income is assessed to tax, and no shareholder shall have any right of appeal with respect to any amount deemed to be his income under the provisions of subsection (2) of section 12 of this Act.

19. Income exempted

- (1) There shall be exempt from the tax all that income specified in the Third Schedule to this Act.
- (2) The Minister may by notice include in the Third Schedule to this Act all or any person or class of persons chargeable to tax by virtue of this Act, so as to exempt the income of that person or class of persons from tax in pursuance of-

[Third Schedule.]

 - (a) any treaty, convention or agreement between the Federal Government of Nigeria and any other country or any arrangement with or decision of an international organisation of which the Federal Government of Nigeria is a member; or
 - (b) any arrangement in that behalf subsisting between the Government of the Federation and the Government of each State.
- (3) Nothing in this section or the Third Schedule to this Act shall be construed so as to-
 - (a) exempt in the hands of the recipients any interest, bonuses, salaries or wages paid wholly or in part out of income exempted thereby; or
 - (b) authorise a State Government, a company or any person or agency of government, a company or any person, whether resident or not in Nigeria, to provide tax exemption clauses in an agreement or arrangement without seeking approval first from the Minister of Finance and thereafter from the President.

PART II

Ascertainment of income

20. Deduction allowed

- (1) For the purpose of ascertaining the income or loss of an individual for any period from any source chargeable with tax under this Act there shall be deducted all outgoing and expenses, or any part thereof, wholly, exclusively, necessarily and reasonably incurred during that period and ultimately borne by that individual in the production of the income, including-
 - (a) a sum payable by way of interest on money borrowed and employed as capital in acquiring the income;
 - (b) interest on loans for developing an owner-occupied residential house;
 - (c) rent for that period, and premiums the liability for which was incurred during that period, payable in respect of land or buildings occupied for the purpose of acquiring the income; and
 - (d) any expense incurred for repair of premises, plant, machinery or fixtures employed in acquiring the income, or for the renewal, repair or alteration of any implement, utensil or article so employed:

Provided that if the premises, plant, machinery, fixtures, implement, utensil or article are used in part for domestic or private purposes, so much of the expense as relates to such use shall not be so deducted;

- (e) bad debts incurred in any trade, business, profession or vocation, proved to have become bad during the period for which the income is being ascertained, and doubtful debts to the extent that they are respectively estimated to have become bad during the said period and notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of the said period:

Provided that-

- (i) where in any period a deduction under this paragraph is to be made as respect any particular debt, and a deduction has in any previous period been allowed in respect of the same debt, the appropriate reduction shall be made in the deduction to be made in the period in question;
- (ii) all sums recovered during the said period on account of amounts previously written off or allowed in respect of bad or doubtful debts shall for the purposes of this Act be deemed to be income of the trade, business, profession or vocation of that period;
- (iii) it is proved that the debts in respect of which a deduction is claimed either were included as a receipt of the trade, business, profession or vocation in the income of the year within which they were incurred, or were advances not falling within the

provisions of subsection (b) of section 21 of this Act made in the course of normal trading, business, professional or vocational operations;

- (f) a contribution or an abatement deducted from the salary or pension of a public officer under the Pensions Act or under any approved scheme within the meaning of that Act, and any contribution, other than a penalty, made under the provisions of any Act establishing the Nigeria Social Insurance Trust Fund or other retirement benefits scheme for employees throughout Nigeria;

[Cap. P4.]

- (g) a contribution to a pension, provident or other retirement benefits fund, society, or scheme, recognised under the Pension Reform Act.

[2020 No. 1, s. 26]

- (h) in the case of income from a trade, business, profession or vocation, any expenses or part thereof incurred for that period (whether the liability was met during that or any previous period) wholly and exclusively for the purpose of the trade, business, profession or vocation unless those expenses are or the same part thereof is deductible for that or any other period under the foregoing provisions of this section, and for the purpose of this paragraph an expense incurred during a period shall be treated as having been incurred for that period to the extent that it is not specifically referable to the income of any other period;

- (i) any expenses which are proved to the satisfaction of the relevant tax authority to have been incurred by the individual on research for the period including the amount of levy paid by him under the National Agency for Science and Engineering Infrastructure Act.

[Cap. N3.]

- (2) Where the income is chargeable solely by reason of it being brought into or received in Nigeria, nothing in this section shall confer a right to any deduction from the amount of that income so brought into or received in Nigeria.

21. Deductions not allowed

Subject to the express provisions of this Act, no deduction shall be allowed for the purpose of ascertaining the income of any individual in respect of-

- (a) domestic or private expense;
- (b) capital withdrawn from a trade, business, profession or vocation and any expenditure of a capital nature;
- (c) any loss or expense recoverable under an insurance or contract of indemnity;
- (d) rent of or cost of repairs to any premises or part of premises not incurred for the purpose of producing the income;
- (e) taxes on income or profits levied in Nigeria or elsewhere except as provided in section 13 of this Act;

- (f) any payment to a pension, provident, savings or widows' and orphans' society, fund or scheme, except as permitted by paragraphs (f) and (g) of subsection (1) of section 20 of this Act;
- (g) the depreciation of any asset;
- (h) any sum reserved out of profits, except as permitted by paragraph (e) of subsection (1) of section 20 of this Act or as may be estimated by the relevant tax authority, pending determination of the amount, to represent the amount of any expense deductible under the provisions of that section, the liability for which was irrevocably incurred during the period for which the income is being ascertained;
- (i) any expenses of any description incurred within or outside Nigeria for the purpose of earning management fees unless prior approval of an agreement giving rise to such management fees has been obtained from the Minister;
- (j) any expense whatsoever incurred within or outside Nigeria as management fees under any agreement entered into after the commencement of this paragraph except to the extent as the Minister may allow.

22. Waiver of refund of liability or expense

Where a deduction has been allowed under the provisions of section 20 of this Act in respect of any liability or any expense incurred and the liability is waived or released or such expense is refunded in whole or in part, the amount of that liability or expense which is waived, released or refunded, as the case may be, shall be deemed to be income on the day on which such waiver, release or refund was made or given.

PART III

Ascertainment assessable income

23. Basis for computing assessable income

- (1) Except as provided in this section, the income of any individual for each year of assessment from each source of his income (hereinafter referred to as "assessable income") shall be the amount of the income of the year immediately preceding the year of assessment from each such source, notwithstanding that he may have ceased to possess that source or that the source may have ceased to produce income.
- (2) Where the relevant tax authority is satisfied that an individual makes, or intends to make up the accounts of a trade, business, profession or vocation carried on by him to some day other than the thirty first day of December, it shall direct that the assessable income from that source be computed on the amount of the gains or profits of the year ending on that day in the year preceding the year of assessment.
- (3) Where the assessable income of an individual from a trade, business, profession or vocation has been computed by reference to an account made up to a certain day, and that individual

fails to make up an account to the corresponding day in the year following, the assessable income from that source both for the year of assessment in which the failure occurs and for the two years of assessment next following shall be computed on such basis as the relevant tax authority in its discretion thinks fit.

- (4) Any basis adopted by a relevant tax authority under this section shall be subject to confirmation or amendment by the Board, with or without retrospective effect, if the individual is deemed to be resident in more than one territory for those three years of assessment, and such additional assessments, reductions or repayments shall be made so as to give effect to any determination of the Board under this subsection.

24. New trades

The assessable income of an individual from a trade, business, profession or vocation carried on by such individual in Nigeria, for its first year of assessment and the two following years of assessment (which years are in this subsection respectively referred to as “the first year”, “the second year” and “the third year”) shall be ascertained in accordance with the following provisions-

- (a) for the first year, the assessable income shall be the income from the date on which the individual commenced such trade, business, profession or vocation in Nigeria to the end of its first accounting period;
- (b) for the second year, the assessable income shall be the income from the first day after the trade or business’ first accounting period to the end of its second accounting period; and
- (c) for the third year and for each subsequent year thereafter, the assessable income shall be the profits from the day after the accounting period just ended.

[2020 No. 1, s. 27]

25. Cessation of trades, etc.

Where an individual permanently ceases to carry on a trade, business, profession or vocation in Nigeria, such individual’s assessable income therefrom shall be the amount of income from the beginning of the accounting period to the date of cessation and the tax thereof shall be payable within three months from the date of cessation.

[2020 No. 1, s. 28]

26. Employment and pensions

- (1) With respect to income from an employment or pension which is derived, or deemed to be derived, from Nigeria, the assessable income of an individual shall be the amount of the income of the year of assessment.
- (2) For the purpose of subsection (1) of this section, income from an employment shall be deemed to arise from day to day except to the extent that it is derived from any bonus, commission or allowance payable on one occasion only or at intervals exceeding one month, and to that extent it shall be deemed to be income-

- (a) of the day on which it is paid; or
- (b) if it is paid after the cessation of the employment, of the last day of the employment including any terminal leave arising therefrom.

27. Trusts and estates

Notwithstanding the foregoing provisions of this Part of this Act, the assessable income of a trustee, or of an executor of the estate of a deceased individual, or of a beneficiary of a trust or estate for any year of assessment shall be the income of that person as determined under the provisions of the Second Schedule to this Act of the year preceding that year.

[Second Schedule.]

28. Itinerant workers

The assessable income for any year of assessment of an itinerant worker shall be determined either under the provisions of sections 23, 24, 25, 26 and 27 of this Act or be the income of the year ending on the thirty first day of December within the year of assessment.

29. Continuity of trades, etc.

An individual carrying on a trade, business, profession or vocation, shall not be treated as having commenced or ceased so to do solely by reason of a change in the territory in which he is deemed to be resident from one year to another, or by reason of his becoming or ceasing to be a partner in a partnership if the nature of the trade carried on by that partnership is the same as that carried on by him before or after he became or ceased to be a partner therein, as the case may be.

30. Apportionment of income

Where in the case of a trade, business, profession or vocation it is necessary in order to arrive at the income of any year of assessment or other period to allocate or apportion to specific periods the income or loss of any period for which accounts have been made up, or to aggregate any such income or loss or any apportioned parts thereof, it shall be lawful to make such allocation, apportionment or aggregation, and any apportionment under this section shall be made in proportion to the number of days in the respective periods.

31. Receipts and payment after cessation of trade, etc.

Where after the date on which an individual has ceased to carry on a trade, business, profession or vocation in Nigeria, he or, after his death, his personal representative receives or pays any sum which would have been included in or deducted from his gain or profit from that trade, business, profession or vocation if it had been received or paid prior to that date, that sum shall be deemed for all purposes of this Act to have been received or paid by him, as the case may be, on the last day on which he carried on that trade, business, profession or vocation.

32. Ascertainment of chargeable income

Where income tax is payable for any year of assessment on the chargeable income of an individual, other than a corporation sole or body of individuals, the amount of that chargeable income shall,

notwithstanding anything to the contrary in any other enactment or law relating to the ascertainment of chargeable income, be the amount of the total income of that individual for that year, ascertained under the provisions of this Act, after any income exempted has been excluded therefrom and the deductions allowed by this Part of this Act have been made.

33. Personal relief and relief for children, dependants

(1) There shall be allowed a consolidation relief allowance of ₦200,000.00 subject to a minimum of 1 percent of gross income whichever is higher plus 20 *per cent* of the gross income and the balance shall be taxable in accordance with the Income table in the Sixth schedule to this Act.
[2011 No. 20.]

(2) For the purposes of this Section, “gross income” means income from all sources less all non-taxable income, income on which no further tax is payable, tax-exempt items listed in paragraph (2) of the Sixth Schedule and all allowable business expenses and capital allowance.
[2020 No. 1, s. 29]

(3) Subject to section 17(1) of this Act, there shall be allowed a deduction of the annual amount of any premium paid by the individual during the year preceding the year of assessment to an insurance company in respect of-

(a) insurance on his life or the life of his spouse; or

(b) Contract for deferred annuity on his own life or the life of his spouse:

Provided that any portion of the deferred annuity that is withdrawn before the end of five years from the date the premium was paid, shall be subject to tax at point of withdrawal.

[2021 No.1, s.23; 2023 No. 1, s.13]

[Former (4) to (6) Deleted by 2019 No. 1, s. 27]

(4) Where pursuant to a direction of the relevant tax authority a deduction is allowed under this section to a husband or wife and the deduction has not been claimed, it shall be allowed to the husband or wife, or to be apportioned between them as the relevant tax authority in its absolute discretion may decide.

34. Deductions to be claimed

Unless the relevant tax authority otherwise directs, no deduction under this Part of this Act shall be allowed to any person for a year of assessment unless claimed by him in writing in such form as the relevant tax authority may prescribe.

35. Proof of claims

(1) The relevant tax authority may require a claimant to a deduction under section 33 of this Act to produce such documentary evidence as may be available in support of any claim and in the absence of that evidence or if that evidence is, in the opinion of the relevant tax authority inadequate, the relevant tax authority may refuse to allow the deduction or allow such part

only of the amount claimed as the relevant tax authority may decide.

(2) Notwithstanding any provision of this Act-

- (a) where a person has failed to produce documentary evidence in support of a claim to a deduction under section 33 of this Act, no objection to an assessment or, if the person is an employee, to any rate at which tax is required to be deducted from his remuneration under the provisions of this Act shall be valid on the grounds that the deduction, or the full amount thereof has not been allowed or taken into account by the relevant tax authority; and
- (b) where an individual claims a deduction under this Act for a year of assessment, or produces evidence in support of a claim previously made and not admitted or not admitted in full by the relevant tax authority within two years after the end of such year, such repayment or set-off of tax, or reduction in any assessment shall be made so as to give effect to any amount or additional amount of the deduction which the relevant tax authority is satisfied should properly be allowed.

PART IV

Ascertainment of total income

36. Total income from all sources

- (1) The total income of an individual for any year of assessment shall be the amount of his total assessable income from all sources for that year, together with any addition thereto to be made in accordance with the provisions of the Fifth Schedule to this Act, less any deductions to be made or allowed in accordance with the provisions of subsection (2) of this section and of that Schedule.

[Fifth Schedule.]

Loss in trade, business, profession or vocation

(2) There shall be deducted from the total assessable income of an individual-

- (a) the amount of a loss incurred by him during the year of assessment in the trade, business, profession or vocation:

provided that no such deduction shall be made unless it is claimed in writing within twelve months after the end of the year of assessment;

- (b) the amount of a loss which the relevant tax authority is satisfied has been incurred by him in the trade, business, provision or vocation during any year preceding the year of assessment which has not been allowed against his assessable income of a preceding year:

Provided that-

- (i) in no circumstances shall the aggregate deduction from assessable income in respect of the loss, exceed the amount of the loss;
 - (ii) a deduction under this paragraph for any year of assessment shall not exceed the amount, if any, of the assessable income included in the total income for that year of assessment, from the trade, business, profession or vocation in which the loss was incurred and shall be made as far as possible from such amount of such assessable income of the first year of assessment after that in which the loss was incurred, and, so far as it cannot be so made then from such amount of such assessable income of the next year of assessment, and so on;
 - (iii) when land or buildings are let by an individual for the purposes of producing income and during any year of assessment the expenses deductible under the provisions of section 20 of this Act in ascertaining the gains or profits from that income exceed the amount of that income, the excess shall be treated as if it were a loss incurred by the individual in a trade or business carried on by him; and
 - (iv) the period for carrying forward of any loss shall be limited to four years after which period any such loss shall lapse.
- (3) The amount of loss incurred by a person engaged in an agricultural trade or business shall be deducted as far as possible from the assessable profits of the first year of assessment after that in which the loss was incurred and so far as it cannot be so made, then from such amount of such assessable profits of the next year of assessment, and soon (without limit as to time) until the loss has been completely set off against the person's subsequent assessable profits.
- (4) For the purpose of subsection (2) of this section, the loss incurred during any year of assessment shall be computed by reference to the year ending on a day in that year of assessment which would have been adopted under subsection (2) of section 23 of this Act for the computation of assessable income of the following year of assessment if a profit had arisen.
- (5) Where under the provisions of section 30 of this Act for the purpose of computing the income of a period from a source chargeable with tax under this Act, being a period the income of which is assessable income from that source for any year, it has been necessary to allocate or apportion to specific periods which fall within that whole period both gains or profits and losses, then no deduction shall be made under the provisions of subsection (2) of this section in respect of the loss or apportioned part thereof referable to that specific period, except to the extent that the loss or part thereof exceeded the aggregate gains or profits apportioned to the remaining specific period or periods within that whole period.
- (6) Notwithstanding any of the provisions of this Act, where for all practical purposes the income of the taxpayer cannot be ascertained or records are not kept in such a manner as would enable proper assessment of income, then such a taxpayer shall be assessed on such terms and conditions as would be prescribed by the Minister in regulations by order of *gazette* under a presumptive tax regime.

[2011 No. 20.]

PART V

Rate of tax and double taxation

37. Charge of income tax

Subject to the provisions of this Act, the income tax that may be payable on the chargeable income of an individual ascertained in accordance with the provisions of this Act shall, in respect of each year of assessment, be assessed at the rate or rates specified in the Sixth Schedule to this Act so however that where after all deductions allowable under this Act the individual has no chargeable income or where the tax payable on the chargeable income of that individual is less than 1 per cent of the total income of that individual, the individual shall be charged to tax at the rate of 1 per cent of his total income:

[Sixth Schedule; 2011 No. 20.]

Provided that minimum tax under this section or as provided for under the Sixth Schedule to this Act shall not apply to a person in any year of assessment where such person earns the National Minimum Wage or less from an employment.

[2020 No. 1, s. 30]

38. Avoidance of double taxation agreement

[2011 No. 20]

(1) Where the Government of the Federal Republic of Nigeria has entered into agreement with the Government of any country outside Nigeria with a view to affording relief from double taxation in relation to tax imposed under the provisions of this Act, any tax of a similar character imposed by the laws of that country, and that it is expedient that the agreement have effect, the Agreement shall have effect “upon ratification by the National Assembly”.

[2011 No. 20.]

(2) Where Agreements have effect by virtue of this section, any obligation as to secrecy in this Act or in any law of a territory subject to or incorporating the provisions of this Act shall not prevent the disclosure to an authorised officer of the government with which the Agreements are made of such information as is required to be disclosed under the Agreements.

[2011 No. 20.]

(3) The Minister may make rules for carrying out the provisions of Agreements having effect under this section.

[2011 No. 20.]

(4) An order made under the provisions of subsection (1) of this section may include provisions for relief from tax for periods commencing or terminating before the making of the order and provisions as to income which is not itself liable to double taxation.

(5) For the purpose of according relief in Nigeria from double taxation, the Agreements specified in the Seventh Schedule shall be deemed to have been made under the provisions of this section and to apply throughout Nigeria with effect from the year of assessment on the first

day of January 1989 in the case of the United Kingdom and in the case of any other country, on such date as is specified in the agreement with that country.

[Seventh Schedule; 2011 No. 20.]

39. Method of calculating relief to be allowed for double taxation

(1) The provisions of this section shall have effect where, under arrangements having effect under section 38 of this Act, foreign tax payable in respect of an income in the country with whom the arrangements are made is to be allowed as a credit against tax payable in respect of that income in Nigeria, and in this section “**foreign tax**” means any tax payable in that country which under the arrangements is to be so allowed.

(2) The amount of the tax chargeable in respect of the income which is liable to both tax and foreign tax shall be reduced by the amount of the credit admissible under the terms of the arrangement:

Provided that credit shall not be allowed against tax for any year or assessment unless the person entitled to the income is resident in Nigeria in that year.

(3) The credit shall not exceed the amount which would be produced by computing, in accordance with the provisions of this Act, the amount of the income which is liable to both tax and foreign tax, and then charging it to tax at a rate ascertained by dividing the tax chargeable (before the deduction of any relief granted by this Part of this Act) on the total income of the individual entitled to the income by the amount of his total income.

(4) Without prejudice to the provisions of subsection (3) of this section, the total credit to be allowed to an individual for any year of assessment for foreign tax under arrangements having effect under section 38 of this Act, shall not exceed the total tax payable by him for that year of assessment.

(5) In computing the amount of the income-

- (a) no deduction shall be allowed in respect of foreign tax (whether in respect of the same or any other income);
- (b) where the tax chargeable depends on the amount received in Nigeria, that amount shall be increased by the appropriate amount of the foreign tax in respect of the income; and
- (c) where the income includes a dividend, and under the arrangements foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividend, the amount of the income shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of the credit.

(6) Notwithstanding the provisions of subsection (5) of this section, a deduction shall be allowed of any amount by which the foreign tax in respect of the income exceeds any credit given under the arrangements.

(7) Paragraphs (a) and (b) of subsection (5) of this section shall apply to the computation of total

income for the purposes of determining the rate mentioned in subsection (3) of this section, and shall apply thereto in relation to all income in respect of which credit falls to be given for foreign tax under arrangements for the time being in force under section 38 of this Act.

- (8) Credit shall not be allowed under the arrangements against tax chargeable in respect of the income of an individual for a year of assessment if he elects that credit shall not be allowed in the case of his income for that year.
- (9) A claim for an allowance by way of credit shall be made not later than two years after the end of the year of assessment, and in the event of dispute as to the amount allowable, the claim shall be subject to objection and appeal in like manner as an assessment.
- (10) Where the amount of a credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in Nigeria or elsewhere, nothing in this Act or in any law of a territory, limiting the time for the making of assessments or claims for relief, shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than two years from the time when all such assessments, adjustments and other determinations have been made, whether in Nigeria or elsewhere, as are material in determining whether any, and if so what, credit falls to be given.

PART VI

Persons chargeable and returns

40. Persons chargeable and returns

- (1) A taxable person shall be chargeable to the tax-
 - (a) in his own name; or
 - (b) in the name of-
 - (i) a receiver, trustee, guardian, curator or committee having the direction, control or management of property or concern on his behalf; or
 - (ii) a person treated as his agent under section 4 of this Act or declared to be his agent under section 50 (1) of this Act,

in like manner and to the like amount as the taxable person would be chargeable.
- (2) A person in whose name a taxable person is chargeable to tax shall be answerable for all matters within his competence which are required to be done by virtue of this section for the assessment of the income of the taxable person and payment of any tax charged thereon.
- (3) Where two or more persons act in the capacity of trustees they may be charged jointly or severally with the tax to which they are chargeable in that capacity and shall be jointly and severally liable for payment of the tax.

41. Returns by taxable person

- (1) For each year of assessment, a taxable person shall, without notice or demand therefor, file a return of income in the prescribed form and containing the prescribed information with the tax authority of the State in which the taxable person is deemed to be a resident together with a true and correct statement in writing containing-
 - (a) the amount of income from every source of the year preceding the year of assessment computed in accordance with the provisions of this Act and rules or regulations made thereunder; and
 - (b) such particulars as by the return may be required for the purpose of this Act and rules or regulations made thereunder with respect to any such income, allowance, relief, deduction or otherwise as may be material for that purpose.
- (2) The form of return shall contain a declaration which shall be by or on behalf of the taxable person that the return contains a true and correct statement of the income computed in accordance with the provisions of this Act and rules or regulations made thereunder or that particulars given in the return are true and complete.
- (3) A taxable person shall file with the relevant tax authority the returns as stipulated in this section within 90 days from the commencement of every year of assessment.
- (4) A written return, statement or an information affecting the liability to tax of an individual for a year of assessment made or given by a person to a tax authority may be treated as having been given to another tax authority in the territory of which that individual is deemed to be resident for that year and, if an error or omission in the return, statement or an information constitutes an offence under the income tax law of that other tax authority, proceedings may be taken by that other tax authority in respect of that offence as though the return, statement or information had been made or given to that other tax authority in the first instance.

42. Place of an offence

Where failure to comply with a requirement lawfully made by a tax authority of a territory under a provision of this Act constitutes an offence by virtue of the provision of an enactment of that territory, then the offence shall be deemed to have been committed at the place from which the notice of that requirement was issued by that tax authority, or at the place where the person charged with the offence resides or at such other place as that tax authority may decide.

43. Returns not to be filed where income is ₦30,000 or less

Notwithstanding that a tax authority requires a taxable person to file a return containing the amount of his income for each year of assessment, no return of income shall be filed by a person whose only source of income in any year of assessment is employment in which he earns ₦30,000 or less from that source.

[1998 No. 19.]

44. Self-assessment by individual

A taxable person required by this Act to file a return of income shall in the return calculate the amount of tax payable in the form as may be prescribed by the Minister by order of *gazette*.

[2011 No. 20]

45. Bonus for early filing of self-assessment return

A person who files a return under sections 41 and 44 of this Act within the time specified for filing of the return shall, if there is no default in the payment arrangement, be granted a bonus of 1 % of the tax payable.

[1996 No. 31.]

46. Power to call for further returns

The relevant authority may give notice in writing to a person when and as often as it thinks necessary requiring him to deliver within a reasonable time limited by such notice fuller or further returns respecting any matter as to which a return is required or prescribed by this Act.

47. Power to call for returns, books, documents and information

- (1) For the purpose of obtaining full information in respect of the income or gain of a person, the relevant tax authority may give notice to the person requiring him, within the time limited by the notice, to-
 - (a) complete and deliver to the relevant tax authority, any return specified in the notice;
 - (b) attend personally before an officer of the relevant tax authority for examination with respect to any matter relating to such income gains;
 - (c) produce or cause to be produced for examination at the place and time stated in the notice which time may be from day-to-day for such period as the relevant tax authority may consider necessary, for the purpose of the examination of any book, document, account and return which the relevant tax authority may deem necessary; or
 - (d) give orally or in writing any other information including a name and address specified in the notice:

Provided that a person engaged in banking shall not be required to disclose any information unless a disclosure is required in a letter signed by the chairman of the relevant tax authority.

[2011 No. 20.]

- (2) For the purpose of paragraphs (a) to (d) of subsection (1), the time limited by a notice shall not be less than seven days from the date of service of the notice, so however that an officer of the relevant tax authority not below the rank of a Senior Manager or Grade Level 14 equivalent may act in any of the cases stipulated in subsection (1) (c) or (d), without giving any of the required notices set out in this section.”

[2021 No. 1, s. 24]

(3) Any bank that contravenes the provisions of this section is liable to penalty of ₦1,000,000 for each of the returns or information not provided or incorrect returns or information provided; and

(3A) For the purpose of subsection (3), the penalty shall be payable in respect of each quarterly return not filed by the bank.

[2021 No. 1, s. 24]

(4) Nothing in the foregoing provisions of this section or in any other provisions of this Act shall be construed as precluding the relevant tax authority from verifying by tax audit any matter relating to the income or gains of a person or any matter relating to entries in any book, document, account or return as the relevant tax authority may from time to time specify in any guideline by the relevant tax authority.

48. Disclosure and procurement of information

(1) Where a tax authority is in possession of any information, document or record relating to an individual which in the interest of the public revenue in Nigeria should be disclosed or transferred to the Board, that information, document or record shall be disclosed or transferred notwithstanding any provision as to secrecy contained in any income tax law of a territory.

(2) A member of the relevant tax authority, its secretary and any person employed in the offices of the relevant tax authority shall not disclose any information relating to the income, tax or personal circumstances of any person which has come into his possession in the course of his duties except as may be expedient

(a) in any legal proceeding arising from this, Act; or (b) to any tax authority; or

(b) in accordance with any provision of an arrangement, with respect to taxes, made with any other country.

(3) Any information disclosed to a tax authority pursuant to subsection (2) of this section shall thereafter be subject to the provisions of that subsection and to any secrecy provisions of the income tax law administered by that authority.

(4) Subject to the provisions of subsections (1), (2) and (3) of this section, a tax authority may, for the purpose of obtaining information in respect of the income or personal circumstances of an individual, give notice to any person to deliver the information including a name and an address specified therein within the time limited by the notice.

49. Information to be delivered by bankers

(1) A person engaged in banking shall require that a person intending to open a bank account for the purposes of the person's business operations shall provide a tax identification number as a precondition for opening or continue operating of such bank account.

[2019 No. 1, s. 28]

(2) Without prejudice to section 48 of this Act, a person engaged in banking shall prepare a quarterly returns specifying the names and addresses of new customers of the bank and shall

not later than the seventh day of the next following month deliver the return to a tax authority of the area where the bank operates, or where such customer is a company, to the Federal Inland Revenue Service.

[2021 No.1, s. 25]

- (3) Subject to subsection (1) of this section, the relevant tax authority may, for the purpose of obtaining information relative to taxation, give notice to a person, including a person engaged in banking business in Nigeria to provide within the time stipulated in the notice, information including the name and address of any person specified in the notice:

[2011 No. 20.]

Provided that a person engaged in banking business in Nigeria shall not be required to disclose any further information under this section unless the disclosure is required by a notice signed by the chairman of the relevant tax authority.

[2011 No. 20.]

- (4) Any bank that contravenes the provisions of this section is liable to penalty of ₦1,000,000 for each of the returns not provided or incorrect returns provided; and

[2021 No.1, s. 25]

- (4A) For the purpose of subsection (4), the penalty shall be payable in respect of each quarterly returns not filed by the bank.”

[2021 No.1, s. 25]

- (5) Nothing in the foregoing provisions of this section or in any other provision of this Act shall preclude the relevant tax authority from verifying by tax audit any matter relating to the profits of a company or any matter relating to entries in any book, document, account or return as the relevant tax authority may, from time to time, specify in its guidelines.

50. Power to appoint agent

- (1) The relevant tax authority may by notice in writing appoint a person to be the agent of another person and the person so declared as agent shall be the agent of that person for the purposes of this Act, and may be required to pay tax which is or will be payable by the person from any money which may be held by him for, or due by or to or become due by him to the person whose agent he has been declared to be, and in default of that payment the tax shall be recoverable from him.
- (2) For the purposes of this section, the relevant tax authority may require any person to give information as to any money, fund or other asset which may be held by him for, or of any money due from him to any person.
- (3) The provisions of this Act with respect to objections and appeals shall apply to any notice given under this section as though that notice were an assessment.

51. Returns to be deemed to be furnished with due authority

A return, statement or form purporting to be furnished under this Part of this Act by or on behalf of any person shall for all purposes be deemed to have been furnished by that person or by his

authority, as the case may be, unless the contrary is proved, and any person signing any such return, statement or form shall be deemed to be cognisant of all matters therein.

52. Books of account

- (1) If a taxable person fails or refuses to keep books of accounts which, in the opinion of the relevant tax authority, are adequate for the purposes of the tax-
 - (a) such a taxable person other than those in salary employment shall be liable on conviction to a penalty of ₦50,000 for individuals and ₦500,000 for corporate entities; and
[2011 No. 20.]
 - (b) the relevant tax authority may by notice in writing direct the person to keep such records, books and accounts, in such form and in such language as may be specified in the notice and, subject to the provisions of subsection (2) of this section, the person shall keep the records, books and accounts as so directed.
[2011 No. 20.]
- (2) A direction of the relevant tax authority made under this paragraph shall be subject to objection and appeal in like manner as an assessment, except that any decision of the Appeal Commissioners may confirm or modify such direction.

53. Power to enter and search premises, etc.

- (1) Where in respect of a trade, vocation, profession or business carried on in Nigeria by an individual (whether or not part of the operations is carried on outside Nigeria), the relevant tax authority-
 - (a) is satisfied that there is reasonable ground for suspecting that an offence involving any form of total or partial non-disclosure of information, or any irregularity or an offence in connection with or in relation to tax has been committed; and
[Eighth Schedule.]
 - (b) is of the opinion that evidence of the offence or irregularity is to be found in the premises, the registered office, or any other office or place of management of the trade, vocation, profession or business or in the residence of the principal officer, factor, agent or representative of the individual,

the relevant tax authority may authorise any of its officers to enter, if necessary by force, the premises, registered office or the place of management or the residence of the individual, factor, agent or representative of the individual, at any time from the date of the authorisation and conduct a search.

- (2) An authority to enter the premises, registered office, place of management or residence of an individual, factor or agent of the individual, to conduct a search, shall be in the form contained in the Eighth Schedule to this Act, and the authority shall be sufficient warrant to search, seize and remove any records and documents found on such premises, office or place of management or residence of the individual, his factor or agent whether or not, belonging to

that individual, factor, agent or the business.

- (3) On entering a premises with a warrant under this section, the officer may seize and remove anything whatsoever found therein which he has reasonable cause to believe may be required for the purposes of arriving at a fair and correct tax chargeable on the individual or as evidence for the purposes of a proceeding in respect of such an offence as is mentioned in subsection (1) of this section.
- (4) For the purposes of this section, an officer authorised by the relevant tax authority to execute a warrant of search under this section may call to his assistance a police officer, and it shall be the duty of the police officer when so required to aid and assist in the execution of a warrant for the purpose of obtaining an information on the tax charged or to be charged on the individual or of the proceeding in respect of an offence referred to in subsection (1) of this section.
- (5) Where an entry to a premises has been made with a warrant under this section and the officer making the entry has seized anything under the authority of the warrant, he shall, immediately before the seizure, if required by any person appearing to be the custodian of those things seized, provide that person with the list of items seized or surrendered.
- (6) An individual on whom a warrant under this section is served shall-
 - (a) cooperate fully with any person authorised to conduct a search by allowing him easy access to the premises to be searched and to the items or documents that may be required for the investigation;
 - (b) answer all questions and queries put to him in the course of the search;
 - (c) facilitate the removal of all items that may be required to assist the investigation
- (7) A person on whom a warrant of search is served and who refuses to cooperate with the person or persons or engages in an act or acts resulting in abuse, physical assault or similar behaviour is guilty of an offence and liable on conviction to a fine of ₦5,000 or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.
- (8) A person may, before, during or after a warrant of search is or has been executed on him, be called upon to attend an interview before an officer of the relevant tax authority, in connection with the activities of the trade or business of the person as would enable the relevant tax authority to arrive at a fair and correct tax liability of the person.
- (9) In this section, “**warrant**” means the warrant as is mentioned under subsection (2) of this section.

PART VII

Assessments

54. Assessment of income tax

- (1) The relevant tax authority shall proceed to assess every taxable person chargeable with income tax as soon as may be, after the time allowed to the person for the delivery of the return provided for in section 41 of this Act, or otherwise as it appears to the relevant tax authority practicable to do so.
- (2) Where a taxable person has delivered a return, the relevant tax authority may-
 - (a) accept the return and make an assessment accordingly; or
 - (b) refuse to accept the return and, to the best of its judgement, determine the amount of the assessable, total or chargeable income of that person and make an assessment accordingly.
- (3) Where a taxable person has not delivered a return within the time allowed and the relevant tax authority is of the opinion that tax is chargeable on that person, the relevant tax authority may, according to the best of its judgement, determine the amount of the assessable, total or chargeable income and make an assessment accordingly, but that assessment shall not affect any liability otherwise incurred by such person by reason of his failure or neglect to deliver a return.
- (4) Nothing in this section shall prevent the relevant tax authority from making assessment on a taxable person before the expiration of the time within which the person is required to deliver a return or give notice of his income under the provisions of section 41 of this Act, if any officer of the relevant tax authority considers the assessment to be necessary for any reason of urgency.
- (5) Notwithstanding the provisions of this section, no assessment to income tax for a year of assessment shall be made by the relevant tax authority on an employee with respect to his emolument or other income if that tax is recoverable by deduction under the provisions of section 81 of this Act unless, within six years after the end of that year-
 - (a) he applies to the relevant tax authority so to be assessed, whether in connection with any claim to repayment of tax or otherwise; or
 - (b) the relevant tax authority considers the assessment to be necessary or expedient so as to arrive at the correct amount of the income tax to be charged on or to be payable by the employee for that year.

55. Additional assessment

- (1) If the relevant tax authority discovers or is of the opinion at any time that a taxable person liable to income tax has not been assessed or has been assessed at a less amount than that which ought to have been charged, the relevant tax authority may, within the year of

assessment or within six years after the expiration thereof and as often as may be necessary assess the taxable person at such amount or additional amount as ought to have been charged, and the provisions of this Act as to notice of assessment, appeal and other proceedings shall apply to that assessment or additional assessment and the tax thereunder.

- (2) For the purpose of computing under subsection (1) of this section the amount or the additional amount which ought to have been charged, all relevant facts consistent with paragraph (b) of the proviso to section 66 (2) of this Act shall be taken into account whether or not known when a previous assessment or an additional assessment on the same taxable person for the same year was being made or could have been made:

Provided that where any form of fraud, wilful default or neglect has been committed by or on behalf of a taxable person in connection with any tax imposed under this Act, the relevant tax authority may at any time and as often as may be necessary assess that taxable person at such amount or additional amount as may be necessary for the purpose of making good any loss of tax attributable to the fraud, wilful default or neglect.

56. List of persons assessed, etc.

- (1) The relevant tax authority shall as soon as possible, prepare a list of taxable persons assessed to income tax under this Act.
- (2) The list (in this Act referred to as “the assessment list”) shall contain the names and addresses of the taxable persons assessed to income tax, the name and address of any person in whose name the taxable person is chargeable, the amount of the assessable, total or chargeable income on which, as the case may be, the tax is computed, the amount of the income tax charged, and such other particulars as may be prescribed by the relevant tax authority.
- (3) Where complete copies of all notices of assessment and of all notices amending assessments are filed in the offices of the relevant tax authority, they shall constitute the assessment lists for the purposes of this Act.
- (4) In the case of an employee from whom tax is recoverable by deduction from his emoluments under the provisions of section 81 of this Act, the relevant tax authority may, from time to time, prescribe-
 - (a) the form in which a record of his assessable and chargeable income, and of the tax so recovered from him, shall be maintained in the offices of the relevant tax authority;
 - (b) the form in which his employer shall maintain a like record; and
 - (c) the form in which his employer shall account to the relevant tax authority for the tax so deducted.
- (5) The employer shall produce the record maintained by him pursuant to subsection (4) of this section for examination by the relevant tax authority within 21 days of notice given to that effect by the relevant tax authority, and allow a duly authorised officer of the relevant tax

authority access to the record and accounts or vouchers relating thereto in the premises of the employer at all reasonable times.

- (6) For the purpose of this section, a notice may be addressed in writing to the employer and served on him, or be given in respect of an employer or class of employers by publication in the relevant *Gazette*.

57. Service of notice of assessment

The relevant tax authority shall cause to be served on or sent by registered post or Courier Service or Electronic Mail to each taxable person, or person in whose name a taxable person is chargeable, whose name appears in the assessment lists, a notice stating the amount of any assessable, total or chargeable income, the tax charged, the place at which payment should be made, and setting out the rights of that person as contained in sections 58 and 59 of this Act.

[2011 No. 20.]

58. Revision in case of objection

- (1) If a person disputes an assessment, he may apply to the relevant tax authority by notice of objection in writing delivered in person, by courier service or via electronic mail, to review and revise the assessment, and the application shall state precisely the grounds of objection to the assessment and shall be made within thirty days from the date of service of the notice of the assessment.

[2019 No. 1, s. 29]

- (2) On receipt of a notice of objection, the relevant tax authority may require the person giving that notice to furnish such particulars and to produce such books or other documents as the relevant tax authority may deem necessary, and may summon any person who may be able to give information which is material to the determination of the objection to attend for examination by an officer of the relevant tax authority on oath or otherwise.
- (3) If a person who has objected to an assessment agrees with the relevant tax authority as to the correct amount of the tax chargeable, the assessment shall be amended accordingly and notice of the tax chargeable shall be served on the person:

Provided that, if an applicant for revision under the provisions of this subsection fails to agree with the relevant tax authority on the amount of the tax chargeable, the relevant tax authority shall give notice of refusal to amend the assessment as desired by that person and may revise the assessment to such amount as the relevant tax authority may, according to the best of its judgement, determine and give notice of the revised assessment and of the tax payable together with notice of refusal to amend the revised assessment and, where requisite, any reference in this Act to an assessment or to an additional assessment shall be treated as revised under the provisions of this proviso.

- (4) If an employee from whom tax is recovered by deduction from his emoluments under the provisions of section 81 of this Act claims that inadequate relief under Part III of this Act has been taken into account in determining the rate or rates at which the deduction have been or is to be made-

- (a) a determination of the relevant tax authority on the claim shall be conclusive with respect to those rates for the year of assessment concerned; and
- (b) if the employee is aggrieved by that determination he may apply to the relevant tax authority to be assessed to income tax as soon as may be, after his assessable income for that year can be finally ascertained, and the assessment shall be subject to the provisions of this Act with respect to objections and appeals.

59.Errors and defects in assessment and notice

- (1) No assessment, warrant or other proceeding purporting to be made in accordance with the provisions of this Act shall be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act and if the person assessed or intended to be assessed or affected thereby is designated therein to common intent and understanding.
- (2) An assessment shall not be impeached or affected-
 - (a) by reason of a mistake therein as to-
 - (i) the name of a taxable person or of a person whose name a taxable person is chargeable; or
 - (ii) the description of income; or
 - (iii) the amount of any income tax charged or shown to be payable;
 - (b) by reason of any variance between the assessment and the notice thereof;

Provided that in the case of an assessment, the notice thereof shall be duly served on the taxable person intended to be charged or the person in whose name the taxable person is chargeable and the notice shall contain, in substance and effect, the particulars on which the assessment is made.

PART VIII

Appeals

60.Establishment of body of Appeal Commissioners

The Tax Appeal Tribunal established pursuant to section 59 of the Federal Inland Revenue Service (Establishment) Act, 2007 shall have the powers to entertain all cases arising from the operations of this Act.

[2011 No. 20.]

61 to 67 deleted by 2011 No. 20

PART IX

Collection, recovery and repayment of tax

68. Payment of income tax

- (1) Income tax charged by an assessment which is not or has not been the subject of an objection or appeal, shall be payable, after the deduction of any amount to be set-off for the purposes of collection, or any amount deposited against the tax, at the place stated in the notice of assessment within two months after the date of service of that notice:

Provided that:

- (a) if the period of two months expires before the fourteenth day of December within the year of assessment for which the income tax has been charged, and the aggregate of the tax to be deducted as aforesaid and of any income tax paid for that year within that period amounts to not less than one half of the tax so charged, then payment of any balance of such tax may be made not later than that day;
 - (b) the relevant tax authority in its discretion may extend the time within which payment is to be made.
- (2) Collection of income tax in a case where notice of an objection or an appeal has been given by or on behalf of the person shall remain in abeyance until the objection or appeal is determined, except that the relevant tax authority may enforce payment of that portion, if any, of the tax which is not in dispute.
- (3) On the determination of an objection or appeal, the relevant tax authority shall serve notice on the taxable person of the tax chargeable as so determined and that tax shall be payable within one month of the date of service of the notice:

Provided that, if the period of one month ends before the fourteenth day of December within the year of assessment and the conditions specified in paragraph (a) of the proviso to subsection (1) of this section are otherwise satisfied with respect to the amount, of the tax chargeable as so determined, then any balance of that tax to be paid may be paid not later than that day.

- (4) Notwithstanding any of the foregoing provisions of this section, if in a particular case the relevant tax authority has reason to believe that any income tax charged by an assessment may not be recovered, by reason of the person charged leaving Nigeria or otherwise, the relevant tax authority may give notice to pay the amount of the tax or to give security to the satisfaction of the relevant tax authority for payment thereof, and if the payment is not made, or security so given, within that time, the amount of the tax shall be recoverable forthwith for the purpose of this subsection, and the relevant tax authority may, if necessary, assess any taxable person for any year of assessment at any time during the preceding year of assessment.

69. Deduction of tax on rent

- (1) Where a rent becomes due or payable to a person, the payer of the rent shall, at the date when the rent is paid or credited, whichever first occurs, shall deduct therefrom tax at the rate prescribed in subsection (2) of this section and shall forthwith pay over to the relevant tax authority the amount so deducted.
- (2) The rate at which tax is to be deducted for the purpose of this section shall be 10 per cent of gross rent.
- (3) In accounting for the tax so deducted to the relevant tax authority, the payer shall state in writing the following particulars which shall accompany the remittance, that is-
 - (a) the gross amount of the rent;
 - (b) the amount of tax being accounted for;
 - (c) the name and address of the recipient and the period for which the rent has been paid or credited; and
 - (d) the address or accurate description of the location of the property concerned.
- (4) For the purpose of this section, the relevant tax authority shall be determined in accordance with the provisions of section 2 of this Act.
- (5) The payer of a rent in subsection (1) of this section refers to a company (corporate or unincorporated) and includes Government Ministries and Departments, parastatals, statutory bodies, institutions and other established organisations approved for the operation of Pay As You Earn system, whether or not liable itself to tax under any enactment or law relating to taxation of income in Nigeria or elsewhere.
- (6) The tax, when paid over to the relevant tax authority, shall be the final tax due from a non-resident recipient of the payments.

[1996 No. 30.]

70. Deduction of tax on interest, etc.

- (1) Where a payment, such as interest or royalty, becomes due or payable to a person, the payer at the date when the payment is made or credited, whichever first occurs, shall deduct therefrom tax at the rate prescribed in subsection (2) of this section and shall forthwith pay over to the relevant tax authority the amount so deducted.
- (2) The rate at which tax is to be deducted under this section shall be 10 per cent of gross interest and 5 per cent of gross royalty.

[1996 No. 30.]

- (3) In accounting for the tax so deducted to the relevant tax authority, the payer shall state in writing the following particulars, that is-

- (a) the gross amount of the payment;
 - (b) the name and address of the recipient; and
 - (c) the amount of the tax being accounted for.
- (4) For the purpose of this section, the relevant tax authority shall be determined in accordance with the provisions of section 2 of this Act, except in the case of savings interest where the relevant tax authority shall be that where the branch of the bank paying the interest is situated.
- (5) The payer in subsection (1) of this section refers to any company (corporate or unincorporated), including Government Ministries and Departments, any person engaged in banking or charged with the administration of parastatals, statutory bodies, institutions and other established organisations approved for the operation of Pay As You Earn System whether or not liable to tax under any enactment or law relating to taxation of income in Nigeria or elsewhere.

[2011 No. 20.]

- (6) The provisions of this section shall not apply to payments of interest by any person engaged in banking where the interest is due and payable on pass-book savings account, which is less than ₦50,000.
- (7) The tax, when paid over to the relevant tax authority, shall be the final tax due on the income.

[1996 No. 30.1996 No. 32.]

71. Deduction of tax on dividend

- (1) Where a dividend or such other distribution becomes due from or payable by a Nigerian company to a person, the company making the payment shall at the date when the amount is paid or credited, whichever first occurs, deduct therefrom tax at the rate prescribed under subsection (2) of this section and shall forthwith pay over to the relevant tax authority the amount so deducted.
- (2) The rate at which tax is to be deducted in this section shall be 10 per cent.

[1996 No. 30.]

- (3) In accounting for the tax so deducted to the relevant tax authority, the company shall state in writing the following particulars, that is-
- (a) the gross amount of the dividend or such other distribution;
 - (b) the name and address of the recipient; and
 - (c) the accounting period or periods of the company in respect of the profits of which the dividend or distribution is declared to be payable and the date on which payment is due.
- (4) For the purpose of this section, the relevant tax authority shall be determined in accordance

with the provisions of section 2 of this Act.

- (5) The tax, when paid over to the relevant tax authority, shall be the final tax due on the income.
[1996 No. 30. 1996 No. 32.]

72. Deduction of tax on director's fees

- (1) Where any payment of director's fees becomes due or payable to a person, the payer at the date when the payment is made or credited, whichever first occurs, shall deduct therefrom tax at the rate prescribed in subsection (2) of this section and shall forthwith pay over to the relevant tax authority the amount so deducted.
- (2) The rate at which tax is to be deducted for the purpose of this section shall be 10 per cent.
[1996 No. 30.]
- (3) In accounting for the tax to be deducted to the relevant tax authority, the payer shall state in writing the following particulars, that is-
- (a) the gross amount of the payment;
 - (b) the name and address of the recipient; and
 - (c) the amount of tax being accounted for.
- (4) For the purpose of this section, the relevant tax authority shall be determined in accordance with the provisions of section 2 of this Act.
- (5) The payer in subsection (1) of this section refers to any company (corporate and unincorporated) including Government Ministries and Departments, parastatals, statutory bodies, institutions and other established organisations approved for the operation of Pay As You Earn System whether or not liable itself to tax under any enactment or law relating to taxation of income in Nigeria or elsewhere.

73. Deduction of tax at source

- (1) Income tax assessable on a person whether or not an assessment has been made, shall, if the relevant tax authority so directs, be recoverable from any payment made by any person to that person.
- (2) A direction under subsection (1) of this section-
- (a) may apply to a person specified in the direction either with respect to a person or persons or a body of individuals, liable to pay tax;
 - (b) shall be in writing addressed to the person or be published in the State *Gazette* and shall specify the nature of payments and the rate at which tax is to be deducted.
- (3) In determining the rate of tax to be applied to any payment made to a person, the relevant tax authority may take into account-

- (a) any assessable income of that person for the year arising from any other source chargeable to income tax under this Act; and
 - (b) any income tax or arrears of tax payable by that person for any of the six preceding years of assessment.
- (4) Income tax recovered under the provisions of this section by deduction from payments made to a person shall be set-off for the purposes of collection against tax charged on that person by an assessment, except that any excess payment arising from compliance with sections 69, 70, 71, 72 of this Act shall be refunded by the relevant tax authority within 90 days except if it is a final tax after the assessment has been fully filed, with the option of setting off against future tax pay by the payer.
- [2011 No. 20.]
- (5) A person required under any provision of the Act to make a deduction from payments made to a person shall account to the relevant tax authority in such a manner as the relevant tax authority may prescribe for the deduction so made.
- (6) The Minister on the advice of the Board may, from time to time, make regulations for carrying out the provisions of this section.

74. Penalty for failure to deduct tax

- (1) Any person or body corporate who, being obliged to deduct tax under section 69, 70, 71, 72 or 73 of this Act, fails to deduct, or having deducted, fails to remit such deductions to the relevant tax authority within thirty days from the date the amount was deducted or the time the duty to deduct arose, shall be liable to a penalty of an amount of 10 *per cent* fine of ₦5,000 or 10 per cent of the amount of the tax due, whichever is higher, in addition to the amount of tax deductible or deducted plus interest at the prevailing commercial rate.

[2019 No. 1, s. 30.]

- (2) The Accountant-General of the Federation shall have power to deduct at source, from its budgetary allocation, un-remitted taxes due from any Ministry, Department or Government Agency and transfer such deduction to the relevant State upon request by such State.

[2011 No. 20.]

75. Application of provision

- (1) The provisions of sections 69, 70, 71 and 72 of this Act shall apply respectively to dividend, interest, rent and royalty forming part of the income or profit exempted from tax under any section of this Act and the Third Schedule thereto:

[Third Schedule.]

Provided however, that dividend, interest, rent or royalty derived from outside Nigeria and brought into Nigeria through Government approved channels shall remain exempted.

- (2) For the purpose of this section, “**Government approved channels**” means-

- (a) the Central Bank of Nigeria;
- (b) any bank or corporate body appointed by the Minister as authorised dealer under Foreign Exchange (Monitoring and Miscellaneous Provisions) Act or any enactment replacing that Act.

[Cap. F34.]

76. Penalty for non-payment of income tax

- (1) If any income charged by any assessment is not paid within the periods prescribed in section 68 of this Act, a sum equal to 10 per cent per annum of the tax shall be added thereto, and the provisions of this Act relating to the recovery and collection of tax shall apply to the recovery and collection of that sum.
- (2) The relevant tax authority shall serve a demand note on the taxable person or the person in whose name the taxable person is chargeable and, if payment is not made within one month from the date of the service of the demand note, the relevant tax authority may proceed to enforce payment as hereinafter provided.
- (3) A penalty imposed under this section shall not be deemed to be part of the tax paid for the purpose of claiming relief under any provision of this Act.
- (4) A person who without lawful justification or excuse, the proof whereof shall lie on such person, fails to pay the income tax within the period of one month prescribed in subsection (2) of this section, shall be guilty of an offence under this Act.

77. Interest for late payment of income tax

The tax due from a taxable person shall carry interest on annual basis at bank base lending rate from the date when the tax becomes payable until it is paid.

[2011 No. 20]

78. Action for income tax by the relevant tax authority

- (1) Income tax may be sued for and recovered in a court of competent jurisdiction by the relevant tax authority in its official name with full costs of action from the person charged therewith as a debt due to the Government of the Federation or to the relevant tax authority.
- (2) For the purposes of this section a Court of competent jurisdiction shall include a magistrate's court, which court is hereby invested with the necessary jurisdiction, provided that the amount claimed in any action does not exceed the amount of the jurisdiction of the magistrate concerned with respect to action for debt.
- (3) In an action brought under subsection (1) of this section, the production of a certificate signed by a person duly authorised by the chairman of the relevant tax authority giving the name and address of the defendant and the amount of income tax due, shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for the said amount.

79. Remission of penalty

The relevant tax authority may, for any good cause shown, remit either before or after judgment the whole or any part of the penalty due under section 76 of this Act.

80. Remission of tax

The Governor of the State may, on the recommendation of the Commissioner responsible for finance acting on the advice of the relevant tax authority, remit wholly or in part, any tax payable under this Act if satisfied that it is just and equitable so to do.

81. P.A.Y.E.

- (1) Income tax chargeable on an employee by an assessment whether or not the assessment has been made, shall, if the relevant tax authority so directs, be recoverable from any emolument paid, or from any payment made on account of the emolument, by the employer to the employee.
- (2) Every employer shall be required to file a return with the relevant tax authority of all emoluments paid to its employees, not later than 31st January of every year in respect of all employees in its employment in the preceding year.
[2011 No. 20.]
- (3) Any employer who contravenes the provisions of this section shall be liable on conviction to a penalty of ₦500,000 in the case of a body corporate, and ₦50,000 in the case of an individual.
[2011 No. 20.]
- (4) Income tax recovered under the provisions of this section by deduction from payment made to a person shall be set-off for the purposes of collection against tax charged on that person by an assessment except that any excess payment arising from compliance with sections 69, 70, 71, 72 of this section of this Act shall be refunded by the relevant tax authority within 90 days after the assessment has been duly filed, with the option of setting off against future tax by the tax payer.
[2011 No. 20.]
- (5) A direction under subsection (1) of this section shall be in writing addressed to an employer or be published in the State *Gazette*, and shall specify the emolument of an employee or class of employees to which it refers and the amount or amounts of income tax to be deducted, whether by reference to tax tables issued by the relevant tax authority or otherwise.
- (6) In arriving at the amount of income tax to be deducted from any payment of or on account of the emolument to an employee, the relevant tax authority shall secure so far as possible that the aggregate amount of all the deductions made during a year of assessment shall equal the income tax chargeable on him in respect of his emoluments for that year.
- (7) Notwithstanding the provisions of subsection (3) of this section, in determining the amount of a deduction or deductions to be made in the case of any particular employee, the relevant tax authority may take into account an assessable income of that employee for the same year arising from any other source chargeable with income tax under this Act.

- (8) Income tax recovered under the provisions of this section by deduction from the emoluments of an employee shall be set-off for the purposes of collection against tax charged on him by an assessment, but only to the extent that the deductions have been made on account of or by reference to an income charged by the assessment.
- (9) The Minister may make regulations generally for the carrying out of the provisions of this section.

82. Employer to be answerable for tax deducted

An employer required under a provision of this Act to make deductions from emoluments or amounts on account of emoluments paid by him to an employee shall account to the relevant tax authority in such manner as the relevant tax authority may prescribe for the deductions so made, and in the event of failure by the employer to make the deduction, or properly to account therefor, the amount thereof together with a penalty of 10 per cent per annum of the amount plus interest at the prevailing commercial rate shall be recoverable as a debt due by the employer to the relevant tax authority.

83. Relief in respect of error or mistake

- (1) If a taxable person who has paid income tax for a year of assessment alleges that an assessment made on him for that year was excessive by reason of some error or mistake in a return, statement or an account made by him or on his behalf for the purpose of the assessment, he may, at anytime not later than six years after the end of the year of assessment within which the assessment was made, make an application in writing to the relevant tax authority for relief.
- (2) On receiving an application, the relevant tax authority shall enquire into the matter and shall, subject to the provisions of this section, give, by way of repayment of tax, relief in respect of the error or mistake as appears to be reasonable and just:

Provided that no relief shall be given under this section in respect of an error or a mistake as to the basis on which the liability of the applicant ought to have been computed where the return, statement or account was in fact made on the basis or in accordance with the practice of the relevant tax authority generally prevailing at the time when the return, statement or account was made.

- (3) In determining an application under this section, the relevant tax authority shall have regard to all the relevant circumstances of the case, and in particular, shall consider whether the granting of relief would result in the exclusion from charge to tax of any part of the income of the applicant, and for that purpose the relevant tax authority may take into consideration the liability to tax of the applicant and any assessment made on him for other years.
- (4) A determination of the relevant tax authority under the section shall be final and conclusive.

84. Payment of tax

- (1) Except as is otherwise provided in this Part of this Act, no claim for repayment of tax shall be

allowed unless it is made in writing within six years after the end of the year of assessment to which it relates.

- (2) The relevant tax authority shall give a certificate of the amount of any tax to be repaid under any of the provisions of this Part of this Act, or under any order of a court of competent jurisdiction, and on the receipt of the certificate the Accountant-General of the relevant territory shall cause repayment to be made in conformity therewith.

85. Tax clearance certificate

- (1) Whenever the relevant tax authority is of opinion that tax assessed on the income of a person for the three years immediately preceding the current year of assessment has been fully paid or that no tax is due on the income or that the person is not liable to tax for any of those three years, it shall issue a tax clearance certificate to the person within two weeks of demand for the certificate by that person or give reasons for the denial, so however, that the payment of current year tax shall not be made a condition for the issuance of the certificate unless the applicant is leaving the country finally.
- (2) A Ministry, Department or an agency of Government or a commercial bank with whom a person has any dealing with respect to any of the transactions mentioned in subsection (4) of this section, shall demand from the person a tax clearance certificate for the three years immediately preceding the current year of assessment and shall verify the genuineness by referring same to the issuing tax authority.

[2011 No. 20.]

- (3) A tax clearance certificate shall disclose in respect of the last three years of assessment-

- (a) chargeable income;
- (b) tax payable;
- (c) tax paid; and
- (d) tax outstanding or alternatively a statement to the effect that no tax is due.
- (e) tax payer identification number (T.I.N)

[2011 No. 20.]

- (4) The provisions of subsection (2) of this section shall apply in relation to the following, that is-
 - (a) application for Government loan for industry or business;
 - (b) registration of motor vehicle;
 - (c) application for firearms licence;
 - (d) application for foreign exchange or exchange control permission to remit funds outside Nigeria;

- (e) application for certificate of occupancy;
 - (f) application for award of contracts by Government, its agencies and registered companies;
 - (g) application for approval of building plans;
 - (h) application for trade licence;
 - (i) application for transfer of real property;
 - (j) application for import or export licence;
 - (k) application for agent licence;
 - (l) application for pools or gaming licence;
 - (m) application for registration as contractor;
 - (n) application for distributorship;
 - (o) confirmation of appointment by Government as chairman or member of a public board, institution, commission, company or to any other similar position made by the Government;
 - (p) stamping of guarantor's form for a Nigerian passport;
 - (q) application for registration of a limited liability company or of a business name;
 - (r) application for allocation of market stalls;
 - (s) appointment or election into public office;
 - (t) for change of ownership of vehicle by the vendor;
[2011 No. 20.]
 - (u) application for plot of land;
[2011 No. 20.]
 - (v) any other transaction as may be determined from time to time
[2011 No. 20.]
- (5) An applicant for control permission to remit funds to a non-resident recipient in respect of income accruing from rent, dividend, interest, royalty, fees or any other similar income shall be required to produce a tax clearance certificate to the effect that tax has been paid on the fund in respect of which the application is sought or that no tax is payable, whichever is the case.
- (6) When a person who has deducted any tax pursuant to the provisions of this Act fails to pay

the tax so deducted to the relevant tax authority, no tax clearance certificate may be issued to that person even if he has fully discharged his own tax liability under this Act.

- (7) A person who-
- (a) for the purpose of obtaining a tax clearance certificate, gives incorrect information in relation to any matter or thing affecting his liability to tax; or
 - (b) obtains a tax clearance certificate through misrepresentation, forgery or falsification, is guilty of an offence and liable on conviction to a fine of ₦50,000 plus twice the tax payable by him or to imprisonment for three years or to both such fine and imprisonment.
- [2011 No. 20.]
- (8) Where a person is able to produce evidence that he has suffered tax deduction at source and that the year of assessment to which the tax relates falls within the period covered by the tax clearance certificate, the person shall not be denied a tax clearance certificate:

Provided that any balance of tax after credit for the tax so deducted has been fully paid.

- (9) A person being a government organization or corporate entity to whom section 85 (2) applies who fails to comply with same is guilty of an offence and is liable on conviction to a fine of ₦5,000,000.00 or to imprisonment for 3 years or both fine and imprisonment.
- [2011 No. 20.]

PART X

Administrative and transitional provisions

86. Joint Tax Board

- (1) There is hereby established a Board which shall be known as the Joint Tax Board (in this Act referred to as “the Board”).
- (2) The Board shall consist of the following members, that is-
- (a) the chairman of the Federal Inland Revenue Service, appointed pursuant to section 11 of the Federal Inland Revenue Service (Establishment) Act, 2007 who shall be chairman of the Service; and
- [2007 No. 13 2007; 2011 No. 20.]
- (b) one member from each State, being a person appointed pursuant to section 87 (2) (a) of this Act, and a nomination under this paragraph shall be evidenced by notice in writing delivered to the Secretary to the Board by the Governor.
- [2011 No. 20.]
- (3) The Joint Tax Board shall appoint an officer who is experienced in income tax matters to be secretary to the Board, and may, in accordance with existing law, appoint such other staff as

the Board may deem to be necessary, from time to time, including on secondment or transfer, from any public service in Nigeria.

[2011 No. 20]

- (4) The secretary shall not be a member of the Board but shall be responsible for maintaining records of the Board's proceedings and for signifying all decisions of the Board.
- (5) The secretary shall summon a meeting of the Board whenever the business requiring its attention so warrants, or on the request of a member, and a majority decision of the members obtained by him in written correspondence on any matter, shall be treated in all respects as though it were a decision of the Board in an actual meeting, unless any member has requested the submission of that matter to such meeting.
- (6) At a meeting of the Board, a member may be represented by an official duly authorised by the member for such purpose, and seven members or their representatives shall constitute a quorum.
- (7) The chairman or any person duly authorised to represent him under subsection (6) of this section shall preside at all meetings of the Board and every decision of the Board shall, when there is no consensus, be by majority of the members present and voting, and the chairman shall have a casting vote apart from his deliberative vote when there is an equality of votes.
- (8) The Legal Adviser, Federal Inland Revenue Service shall be in attendance at meetings of the Service and shall serve thereat as adviser to the Service.
- (9) The Board shall-
 - (a) exercise the power or duties conferred on it by express provisions of this Act, and any other powers and duties arising under this Act which may be agreed by the Government of each territory to be exercised by the Board;
 - (b) exercise powers and perform duties conferred on it by any enactment of the Federal Government imposing tax on the income and profits of companies, or which may be agreed by the Minister to be exercised or performed by it under the enactment in place of the Federal Inland Revenue Service;
 - (c) advise the Federal Government, on request, in respect of double taxation arrangement concluded or under consideration with any other country, and in respect of rates of capital allowances and other taxation matters having effect throughout Nigeria and in respect of any proposed amendment to this Act;
 - (d) use its best endeavours to promote uniformity both in the application of this Act and in the incidence of tax on individuals throughout Nigeria; and
 - (e) impose its decisions on matters of procedure and interpretation of this Act on any State for purposes of conforming with agreed procedure or interpretation.
- (10) The Federal Government shall provide an office for the Board of which the recurrent expenses incurred by that Government, including the emoluments of the secretary and of any other

officers or employees of the Board, shall be shared between the Federal and State Governments either in proportion to their respective tax revenues or in some other manner as those Governments may agree upon from time to time.

87. Establishment and composition of the State Board of Internal Revenue

- (1) There is hereby established for each State, a Board to be known as the State Board of Internal Revenue (in this Act referred to as “the State Board”) whose operational arm shall be known as the State Internal Revenue Service (in this Act referred to as “the State Service”).
[1996 No. 31.]
- (2) The State Board shall comprise-
 - (a) the Chairman of the State Internal Revenue Service as Chairman of the State Board who shall be a person experienced in taxation and a member of a relevant recognized professional body, appointed by the State Governor, subject to confirmation by the State House of Assembly;
[2011 No. 20.]
 - (b) the Directors from within or outside the State Service;
[2011 No. 20.]
 - (c) a Director from the State Ministry of Finance;
 - (d) the Legal Adviser to the State Service;
 - (e) three other persons nominated by the State Governor on their personal merit, one each representing a Senatorial District in the State; and
[2011 No. 20.]
 - (f) the secretary of the State Service who shall be an *ex-officio* member.
- (3) Any five members of the State Board, of whom one shall be the chairman or a Director, shall constitute a quorum.
- (4) The secretary of the State Service shall be appointed by the Board from within the State Service.
- (5) Notwithstanding that the Legal Adviser to the State Service is a member of the State Board, he may appear for and represent the State Board or State Service in his professional capacity in any proceedings in which the State Board or State Service is a party, and the Legal Adviser shall not in such circumstances give evidence on behalf of the State Board or State Service.
- (6) The secretary shall summon a meeting of the State Board whenever the business requiring its attention so warrants, or on the request of a member.
- (7) A majority decision of the members on any matter obtained by the secretary in written correspondence shall be treated in all respects as though it were a decision of the Board in an actual meeting unless any member has requested the submission of the matter to such meeting.

88. Functions of the State Board

(1) The State Board shall be responsible for-

[1996 No. 31.]

- (a) ensuring the effectiveness and optimum collection of all taxes and penalties due to the Government under the relevant laws;
- (b) doing all such things as may be deemed necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected in a manner to be prescribed by the Commissioner:

Provided that an amount of not less than 5 percent of revenue collected as may be approved by a State House Assembly shall be retained by the State Board of Internal Revenue to defray cost of collection and administration.

[2011 No. 20]

- (c) making recommendations, where appropriate, to the Joint Tax Board on tax policy, tax reform, tax legislation, tax treaties and exemption as may be required, from time to time;
 - (d) generally controlling the management of the State Service on matters of policy, subject to the provisions of the law setting up the State Service; and
 - (e) appointing, promoting, transferring and imposing discipline on employees of the State Service.
- (2) The State Board shall be autonomous in the day-to-day running of the technical, professional and administrative affairs of the State Service.
- (3) Subject to subsection (4) of this section, the State Board may, by notice in the *Gazette* or in writing, authorise any person to-
- [1998 No. 18.]
- (a) perform or exercise on behalf of the State Board, any function, duty or power conferred on the State Board; and
 - (b) receive any notice or other document to be given or delivered to or in consequence of this Act and any subsidiary legislation made under it.
- (4) Notwithstanding the provisions of subsection (3) of this section, the State Board shall not delegate any power conferred on it under sections 2, 6, 7, 17, 46, 47, 50, 53, 54, 55, 57, 78, 86, 99, 102, 103 and 104 of this Act to any person.

89. Establishment of Technical Committee of the State Board

(1) There shall be a Technical Committee of the State Board (in this Act referred to as “the Technical Committee”) which shall comprise-

[1996 No. 31.]

- (a) the chairman of the State Board as chairman;
 - (b) the Directors within the State Service;
 - (c) the Legal Adviser to the State Service;
 - (d) the secretary of the State Service.
- (2) The Technical Committee shall-
- (a) have powers to co-opt additional staff from within the State Service in the discharge of the duties;
 - (b) consider all matters that require professional and technical expertise and make recommendations to the State Board;
 - (c) advise the State Board on all its powers and duties specifically mentioned in section 88 of this Act;
 - (d) attend to such other matters as may, from to time, be referred to it by the Board.

90. Establishment of Local Government Revenue Committee

- (1) There shall be established for each local government area of a State a Committee to be known as the Local Government Revenue Committee (in this Act referred to as “the Revenue Committee”).

[1996 No.31.]

- (2) The Revenue Committee shall comprise-
- (a) Supervisor for Finance as chairman;
 - (b) three local government councillors as members; and
 - (c) two other persons experienced in revenue matter to be nominated by the chairman of the local government on their personal merits.

91. Functions of the Revenue Committee

- (1) The Revenue Committee shall be responsible for the assessment and collection of all taxes, fines and rates under its jurisdiction and shall account for all amounts so collected in a manner to be prescribed by the chairman of the local government.

[1996 No.31.]

- (2) The revenue committee shall be autonomous of the local government treasury and shall be responsible for the day-to-day administration of the Department which forms its operational arm.

92. Establishment and composition of Joint State Revenue Committee

- (1) There is hereby established for each State of the Federation a Joint State Revenue Committee which shall comprise-

[1998 No. 19.]

- (a) the chairman of the State Internal Revenue Service as the chairman;
- (b) the chairman of the Local Government Revenue Committee;
- (c) a representative of the bureau on local government affairs not below the rank of Director;
- (d) a representative of the Revenue Mobilisation Allocation and Fiscal Commission, as an observer;
- (e) the State Sector Commander of the Federal Road Safety Commission, as an observer;
- (f) the Legal Adviser of the State Internal Revenue Service;
- (g) the secretary of the Committee who shall be a staff of the State Internal Revenue Service.

93. Functions

- (1) The functions of the State Joint Revenue Committee shall be to-

[1998 No. 19.]

- (a) implement decisions of the Joint Tax Board;
- (b) advise the Joint Tax Board and the State and local governments on revenue matters;
- (c) harmonise tax administration in the State;
- (d) enlighten members of the public generally on State and local government revenue matters; and
- (e) carry out such other functions as may be assigned to it by the Joint Tax Board.

PART XI

Offences and penalties

94. Offences and penalties

- (1) A person guilty of an offence under this Act, or a person who contravenes or fails to comply with any of the provisions of this Act or any rule or regulation made thereunder for which no other penalty is specifically provided, shall be liable on conviction to a fine of ₦20,000 and where the offence is the failure to furnish a return, statement or information or to keep records

required, a further sum of N2,000 for every day during which the failure continues, and, in default of payment, to imprisonment for six months, and the liability to such further sum shall commence from the day following the conviction, or from such other day thereafter as the Court may order.

[2021 No. 1, s. 26]

(2) A person who-

- (a) fails to comply with the requirements of a notice served on him under this Act; or
- (b) without sufficient cause, fails to attend in answer to a notice or summons served on him under this Act, or having attended fails to answer any question lawfully put to him,

is guilty of an offence against this Act.

(3) Notwithstanding any of the provisions of the Criminal Procedure Act or the Criminal Procedure Law or Code of a State, a magistrate may dispense with the personal attendance of the defendant if he pleads guilty in writing or so pleads by a legal practitioner.

[Cap. C41.]

(4) In the case of failure by a person to comply with the requirements of a notice given by the relevant tax authority under the provisions of section 41 of this Act for the purposes of the income tax for a year of assessment to be charged on that person, with respect to income from any source other than from an employment, the relevant tax authority may, in lieu of the institution of proceedings against the person under the provisions of subsection (2) of this section, impose a penalty on him of an amount equal to the income tax chargeable on him for the preceding year of assessment:

Provided that-

- (a) written notice of the penalty shall be served on the person;
- (b) any amount of the penalty remaining unpaid thirty days after service of the notice, may be sued for and recovered in a court of competent jurisdiction by the relevant tax authority in its official name with full costs of action from the person liable thereto as a debt to the Federal Government or relevant State;
- (c) a certificate signed by an officer of the relevant tax authority setting out the name and address of the person, the date of service of the said notice, and the amount of the penalty remaining unpaid, shall be sufficient authority for the court to give judgment for that amount; and
- (d) the relevant tax authority may remit the whole or any part of the penalty, whether before or after judgment, for any reason which appears to it to be adequate.

95. Penalty for making incorrect returns

(1) A person who, without reasonable excuse-

- (a) makes an incorrect return by omitting or understating any income liable to tax under this Act; or
- (b) gives an incorrect information in relation to a matter or thing affecting the liability to tax of any taxable person,

is guilty of an offence and liable on conviction to a fine of ₦20,000 and double the amount of tax which has been undercharged in consequence of the incorrect return or information, or would have been so undercharged if the return or information had been accepted as correct.

[1996 No. 30; 2011 No. 20.]

- (2) No person shall be liable to a penalty under this section unless the complaint concerning the offence was made in the year of assessment in respect of or during which the offence was committed or within six years after the expiration thereof.
- (3) The relevant tax authority may compound any offence under this section and may before judgment stay or compound any proceeding thereunder.

96. False statements and returns

- (1) A person who-

- (a) for the purpose of obtaining a deduction, set-off, relief or an overpayment in respect of tax for himself or any other person, or who in a return, account or particulars made or furnished with reference to tax, knowingly makes a false statement or false representation; or

- (b) aids, abets, assists, counsels, incites or induces any other person-

- (i) to make or deliver a false return or statement under this Act; or

- (ii) to keep or prepare false accounts or particulars concerning any income on which tax is payable under this Act; or

- (iii) unlawfully refuses or neglects to pay tax,

guilty of an offence and liable on conviction to a fine of ₦50,000 for individuals and ₦500,000 for corporate bodies or to imprisonment for not more than six months:

[2011 No. 20.]

Provided that where an offence under this section is committed by a person in relation to tax payable by, or repayable to him for a year of assessment, there shall be substituted for the amount of the fine as aforesaid, the amount of ₦10,000 or treble the tax chargeable on the person for that year, whichever is the greater.

[2011 No. 20]

- (2) The Board may compound an offence under this section and with the leave of the court may before judgment stay or compound any proceeding thereunder.

97. Penalty for offences by authorised and unauthorised persons

A person who-

- (a) being a person appointed for the due administration of this Act or employed in connection with the assessment or collection of the tax-
 - (i) demands from a person an amount in excess of the authorised assessment of the tax;
or
 - (ii) withholds for his own use or otherwise, a portion of the amount of tax collected; or
 - (iii) renders a false return, whether orally or in writing, of the amount of tax collected or received by him; or
 - (iv) defrauds a person, embezzles any money, or otherwise uses his position to deal wrongly with the relevant tax authority; or
- (b) not being authorised under this Act to do so, collects or attempts to collect the tax under this Act,

is guilty of an offence and liable on conviction to a fine of ₦100,000 or to imprisonment for three years or both such fine and imprisonment.

[2011 No. 20.]

98. Tax to be payable notwithstanding proceedings

The institution of proceedings for the imposition of a penalty, fine or term of imprisonment under this Act shall not relieve a person from liability to payment of any tax for which he is or may become liable.

99. Prosecution to be with sanction of Board

No prosecution in respect of an offence under this Part of this Act may be commenced except at the instance of the relevant tax authority.

100. Saving for criminal proceedings

The provisions of this Part of this Act shall not affect any criminal proceeding under any other enactment.

101. Place of an offence

An offence under this Act shall be deemed to occur in the State or at such place as the relevant tax authority may decide.

PART XII

Powers of tax collectors

102. Definition of tax collector

- (1) For the purpose of this Part of this Act, a tax collector means a duly authorised official of the State Service or the Federal Inland Revenue Service.
- (2) The production by a tax collector of a certificate or warrant-
 - (a) issued by, and having printed thereon the official name of the relevant tax authority;
 - (b) setting out his full name or names; and
 - (c) stating that he is, or is authorised to exercise the functions of a tax collector,

shall be sufficient evidence that the tax collector is duly authorised for the purposes of this Act.

103. Power to enter and require information

Whenever it is necessary for the purpose of obtaining information in relation to a person who is or may be liable to the tax imposed by this Act, or the income, occupation or domestic circumstances of that person, or for the purpose of collecting the tax, a tax collector may, during daylight hours, enter into and upon any house or premises, provided he does so without damage to the house or premises, and require a person found therein to give all the information orally to him.

104. Power to distrain

[2011 No. 20.]

- (1) Without prejudice to any other power conferred on the relevant tax authority for the enforcement of payment of tax due from a taxable person that has been properly served with an assessment which has become final and conclusive and a demand notice has been served upon the person in accordance with the provisions of this Part of this Act, or has been served upon the person, then, if payment of tax is not made within the time specified by the demand notice, the relevant tax authority may, in the prescribed form, for the purpose of enforcing payment of tax due-
 - (a) distrain the taxpayer by his goods, other chattels, bond or other securities; or
 - (b) distrain upon any land, premises or places in respect of which the taxpayer is the owner and, subject to the provisions of this section, recover the amount of tax due by sale of anything so distrained.
- (2) The authority to distrain under this section shall be in the form prescribed by the relevant tax authority.
- (3) For the purpose of levying any distress under this section, an officer duly authorized by the

relevant tax authority shall apply to a Judge of a High Court sitting in Chambers, under oath for the issue of a warrant under this section.

- (4) The Judge may, on application made ex-parte, authorize such officer, referred to in sub-section (3) of this section, in writing to execute any warrant of distress and, if necessary, break open any building or place in the daytime for the purpose of levying such distress and he may call to his assistance any police officer and it shall be the duty of any police officer when so required to aid and assist in the execution of any warrant of distress and in levying the distress.
- (5) The distress taken pursuant to this section may, at the cost of the owner, be kept for 14 days, at the end of which time, if the amount due in respect of tax and the cost and charges incidental to the distress are not paid, the same way be sold.
- (6) There shall be paid out of the proceeds of sale, in the first instance, the cost or charges incidental to the sale and keeping of the distress and the residue, if any, after the recovery of the tax liability, shall be payable to the owner of the things distrained or to the appropriate court where the owner cannot be traced, within 30 days of such sale.
- (7) In exercise of the powers of distress conferred by this section, the person to whom the authority is granted under sub-section (3) of this section may distrain upon all goods, chattels and effects belonging to the debtor wherever the same may be found in Nigeria.
- (8) Nothing in this section shall be construed as authorizing the sale of any immovable property without an order of a court of competent jurisdiction.

105. Obstruction to be an offence

Any person who-

- (a) having been required to give information under the provisions of the preceding section wilfully obstructs a tax collector in the performance of his duties by neglecting or refusing to give such information; or
- (b) otherwise obstructs or wilfully misleads or attempts to mislead a tax collector in the performance of his duties under this Part of this Act,

is guilty of an offence under this Act.

106. Immunity from action, etc.

A tax collector shall not be liable in any action or proceeding, whether civil or criminal, for anything done or said by him in the lawful exercise of the powers conferred upon him by section 102 of this Act.

106A. Power to make regulations

- (1) The Minister may, on the recommendation of the Joint Tax Board, make regulations generally

for giving full effect to the provisions of this Act.

- (2) The National Assembly may, upon a proposal by the President, impose, increase, reduce, withdraw or cancel any rate of tax, duty or fee chargeable as specified in section 40 and Second Schedule of this Act and in accordance with section 59 (2) of the 1999 Constitution.

[2011 No. 20.]

PART XIII

Miscellaneous

107. Repeal of Cap. 173, Cap. 43 and Cap. 174 L.F.N. 1990

Subject to section 6 of the Interpretation Act, the Income Tax Management Act, the Capital Transfer Tax Act and the Income Tax (Armed Forces and Other Persons) (Special Provisions) Act are hereby repealed.

[1996 No. 32. Cap. 123.]

108. Interpretation

In this Act, unless the context otherwise requires-

“**assessable income**” means assessable income determined under the provisions of Part III of this Act;

“**Board**” means the Joint Tax Board established under section 86 of this Act;

[2020 No. 1, s. 31]

“**company**” means a company or corporation (other than a corporation sole) established by or under a law in force in Nigeria or elsewhere;

“**employment**” includes any appointment or office, whether public or otherwise, for which remuneration is payable, and “**employee**” and “**employer**” shall be construed accordingly;

“**executor**” includes any person administering the estate of a deceased person;

“**individual**” includes a corporation sole and a body of individuals but does not include a company, partnership, community, family, trustee or executor, or any body of trustees or executors;

“**itinerant worker**” includes an individual irrespective of his status who works at any time in any State during a year of assessment (other than as a member of the armed forces) for wages, salaries or livelihood by working more than one State and work for a minimum of twenty (20) days in at least three (3) months of every assessment year;

[2011 No. 20.]

“**Minister**” means the Minister charged with responsibility for matters relating to taxation;

“**National Minimum Wage**” means the extant National Minimum Wage pursuant to the National Minimum Wage Act;

[2020 No. 1, s. 31]

“Nigerian company” means any company incorporated under the Companies and Allied Matters Act or any enactment replaced by that Act;

[Cap. C20.]

“person” includes an executor, trustee, company, partnership, community, family and individual;

“relevant tax authority” means, in relation to-

- (a) an individual for a year of assessment, the tax authority of the territory in which the individual is deemed to be resident in that year;
- (b) an executor, the tax authority of the territory in which the deceased individual was last deemed to be resident or would have been deemed to be resident if the provisions of this Act had been in force prior to the date of his death;
- (c) a trustee of a trust or settlement-
 - (i) where all the income of the settlement or trust for a year of assessment arises in one territory, the tax authority of that territory; or
 - (ii) where the income of the settlement or trust for a year of assessment arises in more than one territory, or in any other case (where the relevant tax authority cannot be determined under any of the foregoing provisions), the Federal Inland Revenue Service;
- (d) a partnership for a year of assessment, the tax authority of the territory in which the principal office, or place of business of the partnership in Nigeria is situated on the first day of that year, or is first established during that year;
- (e) a village or other indigenous community, the tax authority of the territory in which that community is to be found;
- (f) a person to whom section 2 (1) (b) of this Act applies, the Federal Inland Revenue Service;

“Service” means the Federal Inland Revenue Service as defined in the Federal Inland Revenue Service (Establishment) Act, 2007;

[2019 No. 1, s. 32]

“State Relevant tax authority” means the State Relevant tax authority established under section 87 of this Act;

[1996 No. 31.]

“tax” means any income tax imposed in conformity with the provisions of this Act;

“Tax Authority” means the Federal Inland Revenue Service, the State Board or the Local Government Revenue Committee;

[1998 No. 18.]

“taxable person” means any individual or body of individuals (including a family, any corporation sole, trustee or executor) having any income which is chargeable with tax under the provisions of this Act;

“territory” means a State of the Federation and includes the Federal Capital Territory, Abuja;

“total income” means, in relation to an individual for a year of assessment his aggregate assessable income for that year after the additions and deductions specified in Part IV of this Act have been made;

“year of assessment” means the period of twelve months commencing on the first day of January.

109. Short title and application

This Act may be cited as the Personal Income Tax Act and shall apply throughout the Federation except as herein provided.

SCHEDULES

FIRST SCHEDULE

[Sections 8 (7), 15 and 27.]

Determination of residence

1. Interpretation

In this Schedule, unless where the context otherwise requires-

“earned income” in relation to an individual, means income derived by him from a trade, business, profession, vocation or employment carried on or exercised by him and a pension derived by him in respect of a previous employment;

“foreign employment” means an employment, the duties of which are wholly performed outside Nigeria save during any temporary visit of the employee to Nigeria;

“Nigerian employment” means any employment, not being a foreign employment, the duties of which are wholly or partly performed in Nigeria;

“Nigerian pension” means a pension in respect of past service under, and payable by, a government or governments in Nigeria;

“place of residence” in relation to an individual, means a place available for his domestic use in Nigeria on a relevant day, and does not include any hotel, rest-house or other place at which he is temporarily lodging unless no permanent place is available for his use on that day;

“principal place of residence” in relation to an individual with two or more places of residence on a relevant day, not being both within anyone territory means-

- (a) in the case of an individual with no source of income other than a pension in Nigeria, that place of those places in which he usually resides;
- (b) in the case of an individual who has a source of earned income other than a pension in Nigeria, that place of those places which on a relevant day is nearest to his usual place of work;
- (c) in the case of an individual who has a source or sources of unearned income in Nigeria, that place of those places in which he usually resides.
- (d) in the case of an individual who works in the branch office or operational site of a company or other body corporate, the place at which the branch office or operational site is situate:

Provided that operational site shall include Oil terminals, Oil Platforms, Flow Stations, Factories, Quarries, Construction site with a minimum of 50 workers, etc.

[2011 No. 20.]

2. Foreign employments

An individual not being a person to whom subsection (1) (b) of section 2 of this Act applies, who holds a foreign employment on the 1st day of January in a year of assessment, or who first becomes liable to income tax in Nigeria for that year by reason of his entering that employment during that year, shall be deemed to be resident for that year in the territory in which the principal office of his employer is situated on that day or on the day his foreign employment commences, as the case may be.

3. Nigerian employment

An individual who holds a Nigerian employment on the 1st day of January in a year of assessment, or who first becomes liable to income tax in Nigeria for that year by reason of his entering that employment during that year, shall be deemed to be resident for that year in the territory in which he has a place or principal place of residence on that day or, as the case may be, on the day on which he enters upon the full duties of that employment in Nigeria:

Provided that if the individual is on leave from a Nigerian employment on the 1st day of January in a year of assessment he shall be deemed to be resident for that year by reference to his place or principal place of residence immediately before his leave began.

4. Other employments

An employee whose remuneration is subject to income tax in Nigeria for a year of assessment, but who is not deemed to be resident in a territory for that year under the provisions of paragraph 3 of this Schedule, shall be deemed to hold a foreign employment, and if he has no territory of residence for that year under the provisions of paragraph 2 of this Schedule, he shall be deemed to

be a person to whom subsection (1) (b) of section 2 of this Act applies.

5. Pensions

- (1) An individual whose only source of earned income arising in Nigeria on the 1st day of January in a year of assessment was a pension, and who had a place or principal place of residence on that day shall be deemed to be resident for that year in the territory in which that place or principal place of residence was situated on that day.
- (2) An individual whose only source of earned income arising in Nigeria on the 1st day of January in a year of assessment was a pension, and who had no place of residence on that day, shall be deemed to be resident for that year-
 - (a) if the pension is a Nigerian pension wholly payable by the Government of one territory, not being a Nigerian pension in respect of which the subsection (1) (b) of section 2 of this Act applies, in that territory;
 - (b) if the pension is not a Nigerian pension, in the territory in which the principal office in Nigeria of the pension fund or other person authorising payment of the pension is situated.
- (3) An individual whose only source of earned income arising in Nigeria on the 1st day of January in a year of assessment was a Nigerian pension, and who had no place of residence on that day shall, if the pension is payable by more than one government or if there are two or more pensions arising in different territories to the individual on that day, be subject to subsection (1) (b) of section 2 of this Act.

6. Other earned income

An individual (other than a corporation sole or body of individuals) who has a source of earned income in Nigeria for a year of assessment, other than an employment or a pension, shall be deemed to be resident for that year in the territory in which he had a place or principal place of residence on the 1st day of January in that year:

Provided that-

- (a) if the source of the income is first acquired by the individual during the year of assessment, and he had no place of residence on the first day of that year, he shall be deemed to be resident for that year in the territory where he first establishes a place of residence during that year; and
- (b) in any other case, the individual shall be deemed to be resident for that year in any territory from which any part or the whole of his earned income arising in Nigeria is derived, if the income is derived from more than one territory.

7. Unearned income

An individual (other than a corporation sole or body of individuals) who has no source of earned income in Nigeria for a year of assessment but who has one or more source of unearned income in

Nigeria for that year shall be deemed to be resident for that year in the territory in which he has a place or principal place of residence on the 1st day of January of that year:

Provided that-

- (a) if all the unearned income of the individual for that year arises in one territory, and he has no place of residence on that day, he shall be deemed to be resident for that year in that territory;
- (b) if the unearned income of the individual arises for that year in more than one territory, and he has no place of residence on that day, he shall be deemed to be resident. for that year in the territory from which any part of the unearned income arises.

8.Application

- (1) Where the territory of residence of an individual for a year of assessment may be determined under more than one of the preceding paragraphs of this Schedule, it shall be determined by the first-numbered paragraph which is applicable to his circumstances.
- (2) If, by reason of sub-paragraph (1) of this paragraph, or otherwise, a determination of residence of an individual for a year of assessment falls to be revised by a tax authority, other than that of the territory in which the individual is finally determined to be resident for that year, it shall discharge any assessment made by it on the income of the individual for that year.

9. Corporation sole or body of individuals

- (1) A corporation sole or body of individuals other than a family or community shall be deemed to be resident for a year of assessment in the territory in which its principal office in Nigeria is situated on the first day of January in that year or, if it has no office in Nigeria on that day, in a territory in which any part or the whole of its income liable to tax in Nigeria arises for that year.

10.Objections, disputes and appeals

- (1) In an objection to an assessment which is or includes, an objection to the determination of an individual's territory of residence by any tax authority, the individual shall set out all the grounds on which he relies to refute that determination, and those grounds together with the observations thereon by that tax authority shall be referred by it to the Board.
- (2) Where a dispute arises as to the territory of residence of an individual for a year of assessment, either between two or more tax authorities or between a tax authority and an individual before he has been assessed to tax by that authority for that year, the facts may be referred to the Board by any tax authority which is a party to the dispute.
- (3) Where a dispute arises between two or more tax authorities with respect to the territory of residence of an individual for a year of assessment and that individual has already been assessed to tax in Nigeria for that year, the facts of that dispute may be referred to the Board by any tax authority.

- (4) The secretary to the Board shall give notice of any grounds, observations or facts referred to the Board under the provisions of sub-paragraphs (1), (2) or (3) of this paragraph to those parties, including the individuals who are affected or likely in his opinion to be affected by a determination of residence by the Board, and shall afford the parties a period being not less than thirty days from the issue of the notice in which to reply thereto.
- (5) The secretary to the Board may call for further information to be given by any party, including an individual, to an objection or dispute within such time as may appear to him to be reasonable, and after the expiry of that period or to the period mentioned in subparagraph (4) of this paragraph, whichever is the later, the Board shall proceed to determine the territory of residence of the individual for the relevant year of assessment.
- (6) Written notice of a determination by the Board shall be given by its secretary to the individual and to each tax authority affected thereby, and an assessment which has been made on that individual otherwise than in accordance with the determination of the Board shall be discharged.
- (7) Pending a determination by the Board, the tax authority which has referred an objection to the Board under the provisions of this paragraph shall not determine that objection unless that objection, insofar as it concerns the territory of residence of the individual, is previously withdrawn by him in writing.
- (8) A determination by the Board under this paragraph shall be binding on all tax authorities and on an appeal tribunal or other body established under a law of a territory for the purposes of income tax within that territory, but may be questioned by the individual in the High Court of the territory of the tax authority which has made the relevant assessment.
- (9) It shall not be competent for an appellant in an appeal against an assessment to enter a ground of appeal concerning his territory of residence which he has not disclosed on a valid objection to the relevant assessment.
- (10) An appeal from a decision of a High Court in respect of the territory of residence of an individual shall lie to the Court of Appeal.
- (11) Where a tax authority discovers that an individual who has been assessed by it to tax for a year of assessment, is deemed to be resident for that year in the territory of some other tax authority, the assessment shall be discharged and any tax already paid by the individual in respect of that assessment shall be-
 - (a) set-off against tax owing for any other year by that individual to the first mentioned authority; or
 - (b) paid to the Government of that other authority; or
 - (c) repaid to the individual,in such proportions as the first mentioned authority may decide.

SECOND SCHEDULE

[Sections 16 and 27.]

PART I

Income from settlements, trusts and estates

1. Subject to Part II of this Schedule and notwithstanding Part III of this Schedule, the income of a settlement or trust shall for all the purposes of this Act be deemed to be the income of the settlor or person creating the trust, as the case may be, if-
 - (a) that settlor or person retains or acquires an immediately exercisable general power of appointment over the capital assets of the settlement or trust or over the income derived therefrom; or
 - (b) that settlor or person makes use, directly or indirectly, by borrowing or otherwise, of any part of the income arising under the settlement or trust; or
 - (c) the settlement or trust is revocable in circumstances whereby that settlor or person, or the spouse thereof, resumes control over any part of the income or assets comprised therein:

Provided that a settlement or trust shall not be regarded as revocable solely by reason of the fact that an income or asset comprised therein may revert to that settlor or person, or the spouse thereof, in the event of a beneficiary predeceasing that settlor or person, or of the happening of an uncertain event upon which the settlement or trust is limited.

2.
 - (1) For the purposes of this Part and Part III of this Schedule, the income of a settlement or trust, other than a settlement or trust to which the provisions of paragraph 4 of this Schedule apply, or of the estate of a deceased individual shall be so much of that income as is derived from a source in Nigeria and any of the income brought into or received in Nigeria.
 - (2) The amount of the income (in this Schedule referred to as the “computed income”) of each period of twelve months ending on the thirty first day of December in each year shall be ascertained as though the provisions of Parts I and II of this Act applied thereto and-
 - (a) there shall be deducted-
 - (i) any expenses of the trustee or executor relative to the settlement, trust or estate which is authorised by the terms of the deed of settlement or trust or of the will, as the case may be;

- (ii) any annuity of fixed annual amount paid out of the income of the settlement, trust or estate in accordance with the provisions of the deed or will; and
 - (b) if the income includes any gain or profit from a trade, business, profession or vocation, or a rent or premium, there shall be added or deducted, as the case may require, any sum which would have been added or deducted for the next following year of assessment under the provisions of Part IV of this Act if the income from those sources had been the assessable income of an individual for that year ascertained under the provisions of section 36 of this Act.
3. The computed income of a year of a settlement, trust or estate shall be apportioned for the assessment in the following manner-

(a) where-

- (i) the terms of the deed of settlement or trust or of a will provide that the whole income of the settlement, trust or estate after deduction of any authorised expense or annuity of fixed amount is to be divided in specific proportions among the beneficiaries entitled thereto, from time to time; or
- (ii) by operation of law, on an intestacy, the income of an estate is to be divided in the manner referred to in sub-paragraph (a) (i) of this paragraph,

the income of each beneficiary of any year from the settlement, trust or estate shall be his similarly apportioned share of the computed income;

- (b) where a trustee or executor has discretion to make any payment (other than a payment on account) to a beneficiary out of the income of a settlement, trust or estate in such amount as he sees fit, from time to time; then-
 - (i) the amount of the payment to a beneficiary made in the course of a year shall be treated as income of that year which is assessable to tax in the hands of that beneficiary; and
 - (ii) out of the remainder of the computed income after deducting the aggregate amount of all the payments during any year, there shall be apportioned to each beneficiary who has any specified proportional interest in the income of the settlement, trust or estate, so much thereof as is obtained by applying the proportion to that remainder:

Provided that if the aggregate amount exceeds the computed income, the amount of each payment to be treated as income in the hands of a beneficiary under this subparagraph shall be reduced proportionally so that the aggregate of the amount as so reduced does not exceed the computed income;

- (c) any remainder of the computed income of a settlement, trust or estate of any year after deducting all amounts apportioned to beneficiaries, or treated as income in the hands of beneficiaries under the provisions of sub-paragraph (b) of this paragraph shall be apportioned to the trustee or executor for assessment in his name as trustee of the settlement or trust or as executor of the estate.

PART II

Special provisions as to settlement on unmarried children

4.

- (1) Notwithstanding any other provision of this Act where, by virtue or in consequence of a settlement and during the life of the settlor an income is paid to or for the benefit of a child of the settlor in a year of assessment, the income shall, if at the time of payment the child was an infant and unmarried, be treated for the purposes of this Act as the income of the settlor for that year and not as the income of any other person.
- (2) Income paid to or for the benefit of a child of a settlor shall not be treated as provided in subparagraph (1) of this paragraph for any year of assessment in which the aggregate amount of the income paid to or for the benefit of that child, which but for this subparagraph, would be so treated by virtue of subparagraph (1) of this paragraph, does not exceed ₦500.
- (3) This paragraph shall not apply in relation to an income arising under a settlement in a year preceding a year of assessment if the settlor is not in Nigeria at any time during that year of assessment, or is not in Nigeria for a period or periods amounting to 183 days or more in any twelve-month period commencing in the calendar year and ending either in the same year or the following year.

5. For the purposes of paragraph 4 of this Schedule-

- (a) income which, by virtue or in consequence of a settlement, may become payable or applicable to or for the benefit of a child of the settlor in the future (whether on the fulfillment of a condition or on the happening of a contingency, or as the result of the exercise of a power or discretion conferred on any person, or otherwise) shall be deemed to be paid to or for the benefit of that child; and
- (b) an income dealt with as aforesaid which is not required by the settlement to be allocated, at the time when it is so dealt with, to any particular child or children of the settlor shall be deemed to be paid in equal shares to or for the benefit of each of the children to or for the benefit of whom or any of whom the income or assets representing the income will or may become payable or applicable.

6.

- (1) Where, by virtue of paragraph 4 of this Schedule, any income tax becomes chargeable on and is paid by the settlor, he shall be entitled-
 - (a) to recover from any trustee or other person to whom the income is payable by virtue or in consequence of the settlement the amount of the tax so paid; and
 - (b) for that purpose to require the relevant tax authority to furnish to the settlor a certificate specifying the amount of income in respect of which he has so paid tax and the amount of

the tax so paid, and any certificate so furnished shall be conclusive evidence of the facts appearing therein.

- (2) Where the settlor obtains from a trustee or any other person a payment in excess of the amount he is entitled to recover by virtue of sub-paragraph (1) of this paragraph, then an amount equal to the excess shall be paid by him to the trustee or other person to whom the income is payable by virtue or in consequence of the settlement, or, where there are two or more such persons, the amount shall be apportioned among those persons as the case may require.
- (3) If a question arises as to the amount of any payment or as to any apportionment to be made under sub-paragraph (2) of this paragraph, that question shall be decided by the relevant tax authority and its decision thereon shall be final and not subject to an appeal or any review whatsoever by any court of law.

7.

- (1) In the case of any settlement where there are more than one settlor, paragraph 4 of this Schedule shall, subject to the provisions of this paragraph, have effect in relation to each settlor as if he were the only settlor.
- (2) In the case of a settlement as aforesaid, income originating from that settlor or person may, for the purposes of paragraph 4 of this Schedule, be taken into account, in relation to any settlor, as income paid by virtue or in consequence of the settlement to or for the benefit of a child of the settlor.
- (3) References in this paragraph to income originating from a settlor shall include references to the following, that is-
 - (a) income from property which that settlor has provided directly or indirectly for the purposes of the settlement;
 - (b) income from property representing that property, including accumulated income from that property; and
 - (c) income from so much of any property which represents both property provided as aforesaid and other property as, on a just apportionment, represents the property so provided.

8. In this Part of this Schedule-

“child” includes a stepchild, an adopted child and an illegitimate child;

“settlement” includes any disposition, trust, covenant, agreement, arrangement or transfer of assets;

“settlor” in relation to a settlement, includes a person by whom the settlement was made or entered into directly or indirectly, and in particular (but without prejudice to the generality of the foregoing) includes a person who has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for

that other person to make or enter into the settlement.

PART III

Supplementary provisions

9. For the purposes of this Act, where an asset of a trade or business, profession or vocation forms part of the estate of a deceased individual, being an asset in respect of which an annual allowance may be claimed in arriving at the total income of that individual for the year of assessment in which he died, the provisions of the Fifth Schedule to this Act shall apply in the following manner-
 - (a) notwithstanding any provision of that Schedule, no balancing allowance or charge shall be given or made to that individual in respect of the asset for that year; and
 - (b) the estate shall be deemed to have incurred qualifying expenditure on the acquisition of the asset equal in amount to the residue of the expenditure on the day following the death of the individual; and
 - (c) in the event of the disposal of the asset on or after that day, an addition to be made by way of a balancing charge in computing the income of the estate shall be made by reference to the sum of all allowances or deductions made in respect of the asset to the individual and to the estate.
10. An individual in receipt of an annuity of fixed annual amount paid out of the income of a settlement, trust or an estate shall be assessable to tax on the full amount of the annuity.
11. The income arising from a settlement, trust or an estate assessable to tax under a provision of this Schedule in the hands of any trustee, executor, beneficiary or annuitant for a year of assessment shall be the amount of the income ascertained under the foregoing provisions of this Schedule of the year preceding that year.
12. 12.
 - (1) Where the income of a settlement, trust or estate of a year includes an income which has borne tax in Nigeria or elsewhere, whether by deduction or otherwise, the provisions of Part V of this Act with respect to any relief to be given or repayment to be made shall apply as though the whole of the taxed income were receivable by the persons to whom the computed income of that year is apportioned under the provisions of paragraph 3 of this Schedule-
 - (a) in due proportion to their respective shares therein; or
 - (b) where sub-paragraph (b) of paragraph 3 of this Schedule applies in proportion to their shares in the remainder of the computed income as therein specified, and where there is no computed income, the relief or repayment shall be given or made to the trustee or executor for the account of the settlement, trust or estate.
 - (2) For the purposes of this paragraph, references to an individual in Part V of this Act shall be

deemed to include references to a trustee or executor.

13. Subject to the foregoing provisions of this Schedule-
 - (a) a trustee of a settlement or trust, and every executor, shall be answerable for all things to be done in connection with the tax to; and
 - (b) an income apportioned to a trustee or executor shall be assessable by the relevant tax authority in relation to that settlement, trust or estate.
14. A trustee of a settlement or trust in Nigeria, and the executor of an estate in Nigeria, shall prepare accounts of the income from all sources of the settlement, trust or estate for successive periods to the thirty-first day of December in each year, and to the date on which the assets of the settlement, trust or estate are finally distributed.
15. An appeal against the inclusion of an income of a settlement, trust or estate in an assessment to tax, by whatever tax authority it may have been made, shall lie only in accordance with the appeal provisions of the income tax law of the territory to the tax authority of which the trustee or executor is answerable for the relevant year of assessment under the provisions of paragraph 13 of this Schedule.

THIRD SCHEDULE

[Sections 19 (1),75.]

Income exempted

1. The incomes set out in this Schedule are exempted from taxation.

[Paragraphs 2 and 3 deleted by 2011 No. 20]
4. The emoluments payable from United Kingdom funds to members of visiting or other forces and to persons in the permanent service of the United Kingdom Government in Nigeria in respect of their offices under the United Kingdom Government and the emoluments payable to members of any civilian component, and the income of any authorised service organisations, accompanying the visiting forces:

Provided that this exemption shall not apply to any individual who is a citizen of Nigeria or who ordinarily resides in Nigeria.
5. All consular fees received on behalf of a foreign State, or by a consular officer or employee of the State of his own account, and all income of such officer or employee, other than income in respect of any trade, business, profession or vocation carried on by an officer or employee or in respect of any other employment exercised by him with Nigeria:

Provided that this exemption shall not apply where the employee is engaged on domestic duties or where the officer or employee ordinarily resides in Nigeria and is not also a national of the foreign State.

6.

(1) Interest accruing to a person who is not resident in Nigeria as specified in the following sub-paragraphs-

(a) the interest on a loan charged on the public revenue of the Federation and raised in the United Kingdom;

(b) the interest on a bond issued by the Government of the Federation to secure repayment of a loan raised from the International Bank for Reconstruction and Development;
[2019 No. 1, s. 31]

(c) the interest on any money borrowed by the Government of the Federation or of a State on terms which include the exemption of interest from tax in the hands of a non-resident person;

(d) where the Minister of Finance so consents, the interest on any moneys borrowed outside Nigeria by a corporation established by a law in Nigeria upon terms which include the exemption of such interest from tax in the hands of any non-resident person;

(e) the interest on deposit accounts, provided the deposits into the account are transfers wholly made up of foreign currencies (funds) to Nigeria on or after 1 January 1990 through Government-approved channels and the depositor does not become non-resident after making the transfer while in Nigeria.

(2) For the purpose of the exemption referred to in sub-paragraph (1) of this paragraph, a person shall only be deemed to be resident in Nigeria for a year of assessment if he is in Nigeria for a period or periods amounting to 183 days or more in any twelve-month period commencing in the calendar year and ending either in the same year or the following year.

7. Interest on any loan granted by a bank to a person engaged in-
[2019 No. 1, s. 31]

(a) Agricultural trade or business; and

(b) the fabrication of any local plant and machinery;

8. The income of a national of the United States of America from employment by the International Cooperation Administration, being an administration or agency formed and directed by the Government of that country.

9. The income of a national of the United States of America from employment by the International Development Services as agents or the International Cooperation Administration.

10. [Deleted by 2019 No. 1, s. 31]
11. An income in respect of which tax is remitted or exempted under the provisions of the Diplomatic Immunities and Privileges Act or of any enactment, order or notice continued in force or effected by that Act.
[Cap. D9]
12. The income of a local government or government institution.
13. The income of any ecclesiastical, charitable or educational institution of a public character in so far as such income is not derived from a trade or business carried on by such institution.
14.
 - (1) Pension granted to any person pursuant to any enactment or law for the time being in force.
 - (2) Wound and disability pensions granted to members of the armed forces or of any recognised national defence organisation or to a person injured as a result of enemy action.
[2011 No. 20]
15. [Deleted by 2019 No. 1, s. 31]
16. The income of a trade union registered under the Trade Unions Act, in so far as the income is not derived from a trade or business carried on by that trade union.
[Cap. T14.]
17. Gratuities payable to a public officer by the Government of the Federation or of a State in respect of services rendered by him under a contract of service with that Government and described as gratuities either in the contract or some other document issued by or on behalf of Government in connection with such contract.
18. Gratuities payable to an employee in the private sector in respect of services rendered by him under a contract of service with his employer and described as gratuities either in the contract or some other document issued by or on behalf of the employer in connection with such contractor.
[2019 No. 1, s. 31]
19. [Deleted by 2019 No. 1, s. 31]
20. [Deleted by 2019 No. 1, s. 31]
21. The income of a statutory or registered friendly society in so far as such income is not derived from a trade or business carried on by such society.
22. The income of a co-operative society registered under the Nigerian Cooperative Societies Act, not being income from any trade or business carried on by the Society other than the co-

operative activities solely carried out for and with its members or from any share or other interest possessed by that Society in a trade or business in Nigeria or elsewhere carried on by some other person or authority.

[Cap. N98.]

23. A sum received by way of death gratuities or as consolidated compensation for death or injuries.

24. [Deleted by 2019 No. 1, s.31]

25.

(1) Dividends paid to a person by a company incorporated in Nigeria:

Provided that-

- (a) the equity participation of the person in the company paying the dividends is either wholly paid for in foreign currency or by assets brought into Nigeria between 1 January 1987 and 31 December 1992; and
- (b) the person to whom the dividends are paid owns not less than 10 per cent of the equity share capital of the company.

(2) For the purpose of the exemption referred to in sub-paragraph (1) of this paragraph, the dividend tax-free period shall commence from the year of assessment following the year in which the new capital is brought into Nigeria for the real purpose of the trade or business in Nigeria of the company paying the dividends and shall continue for five years if the company paying the dividends is engaged in agricultural production within Nigeria or processing of Nigerian agricultural products produced within Nigeria or production of petrochemicals or liquefied natural gas, and in any other case, the tax-free period shall be limited to three years.

26. Any compensation for loss of employment.

27. The income of a person, other than a citizen of Nigeria, from employment by any government, organisation or agency between which and the Government of the Federation or of a State there exists an arrangement for technical assistance, insofar as and to the extent only that the employment is solely in pursuit of the technical assistance arrangement.

[1996 No. 32.]

28. The interest accruing to a person on foreign currency domiciliary accounts.

29. Income earned from outside Nigeria by a temporary guest, lecturer, teacher, nurse, doctor and other professional and brought into Nigeria shall be exempt from tax provided that such income is deposited in a domiciliary account in an authorised bank in Nigeria.

[1996 No. 32.]

30. Income from dividend, interest, rent, royalties, fee, commission earned from abroad and brought into Nigeria by a Nigerian resident is exempt from tax, provided that such income is brought in convertible currency and paid into a domiciliary account in a bank approved by the Government.

31. Income earned from abroad by an author, sportsman, playwright, musician, artist and brought into Nigeria is exempt from tax provided that such income is brought in foreign currencies and paid into a domiciliary account in an authorised bank in Nigeria.

31A. Income earned from-

- (a) Bonds issued by Federal, State and Local Governments and their agencies;
- (b) Bonds issued by corporate including supra-nationals; and
- (c) Interest earned by holders of the bonds, and short-term securities listed in paragraphs (a) and (b)

[2011 No. 20.]

32. Nothing contained in this Schedule shall exempt any dividend, interest or royalty from a deduction to be made under the provisions of section 69 or 70 of this Act.

33. The income of a person from an employment where such person earns gross income of National Minimum Wage or less from such employment

[2020 No. 1, s. 33]

FOURTH SCHEDULE

[Section 20 (g).]

Retirement benefits schemes

1. In this Schedule-

“pension fund” means a society, fund, contract or scheme the assets of which are held under irrevocable trusts and any scheme established by a law in Nigeria or elsewhere, the main objects of which are, in the opinion of the Board, the provision of non-assignable and non-commutable retirement pensions or annuities for an individual or his dependants after his death, or for any group or class of individuals and their dependants;

“provident fund” means a society, fund or scheme, not being a pension fund, established under irrevocable trusts or a law in Nigeria or elsewhere, the objects of which are the provision of retirement benefits for an individual or benefits for his dependants, after his death, or for any group or class of individuals and their dependants.

2. For the purpose of ascertaining the income of an individual the amount to be deducted in respect of a contribution made by him to a pension, provident or other retirement benefits fund, society or scheme approved by the Board under the provisions of paragraph (g) of section 20 (1) of this Act shall, subject to such conditions as the Board may prescribe, be

computed in accordance with the provisions of this Schedule.

3. Subject to such conditions as may be prescribed by the Board, the amount to be deducted for the purpose of ascertaining the income of any period of an employer or employee in respect of any contribution paid to a pension fund shall be the amount of the contribution paid by the employer or employee respectively during that period.
4. Subject to such conditions as may be prescribed by the Board, the amount to be deducted for the purpose of ascertaining the income of any period of an employer or employee in respect of any contribution paid to a provident fund shall be the amount of the contribution paid by the employer or employee respectively during that period:

Provided that where the aggregate of the contributions made for any period by an employer and employee to a provident fund (other than a contribution made with the approval of the Board in respect of the past service of the employee with that employer) exceeds 25% of the remuneration paid by that employer to that employee for that period, the excess shall be excluded from the amount to be deducted in ascertaining the income of either the employer or employee by reference to the relevant accounting period of the employer or to the period for which the employee's income is to be ascertained, as the Board may decide.

5. In the case of an employee, no deduction shall be allowed under this Schedule in respect of an excess over ₦5,000 for a year of assessment of the aggregate of the following amounts-
 - (a) a deduction allowed under paragraph (f) of section 20 of this Act;
 - (b) a relief given to him for that year in respect of policies of insurance or contracts for deferred annuities on his life or the life of his wife;
 - (c) a deduction which would be otherwise allowed under this Schedule.

6.

- (1) In the case of an employee whose employment ceases before he has completed five years' employment with an employer, if the total value of any benefit (other than a sum paid by way of a pension or annuity) received by the employee from a pension or provident fund exceeds a sum calculated at the rate of ₦300 per annum for the period of the employment, the amount of the excess shall be deemed to be income derived by him from his employment on the last day thereof.
- (2) For the purposes of this paragraph, where a person has had employment or successive employments with anyone or more Governments established in Nigeria (including in such expression the former Government of Nigeria) and his next employment is with a body directly incorporated by, or an unincorporated body established by, an Act or Law of any legislature in Nigeria, then his employment or successive employments with that Government or Governments and his next employment with that body shall be treated as one continuing employment.
- (3) This paragraph shall, as respects a person who is not a citizen of Nigeria and ceases to be employed by a body corporate or unincorporated as is mentioned in sub-paragraph (2) of this

paragraph, have effect subject to the following provisions that is-

- (a) if the relevant tax authority within the meaning of this Act is satisfied that the employment in question ceased with a view to the employment of a citizen of Nigeria in the place of that person, the provisions of this paragraph 6 shall not apply in relation to that employment; and
 - (b) the relevant tax authority may if it thinks fit, in a case not falling within the foregoing paragraph, determine that those provisions shall apply in relation to that employment with the substitution for the reference to the rate aforesaid of a reference to such larger rate as may be specified in the determination.
- 7. Where in respect of a pension or provident fund an employer becomes entitled to any benefit whatsoever, the value of that benefit shall for the purpose of this Act be deemed to be income of the trade, business, profession or vocation in connection with which the fund was approved at the date when the right to the benefit first arose.
 - 8. Where in respect of any pension or provident fund any benefit is paid to an employee before the cessation of his employment with an employer, such benefit shall be deemed to be income derived by him from his employment on the date on which the benefit is paid.
 - 9. Where a contribution is made by a self-employed individual to a pension, provident, annuity or other retirement benefit fund, society or scheme approved by the Board for his eventual retirement from gainful employment, the premium shall be exempted from tax provided it does not exceed 10% of the self-employed total income.

[1996 No. 32.]

FIFTH SCHEDULE

[Section 36.]

Capital allowances

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

- 1. Interpretation.
- 2. Year of assessment.
- 3. Provisions relating to mining expenditure.
- 4. Owner and meaning of relevant interest.
- 5. Sale of buildings.

6. Qualifying industrial building expenditure.
7. Initial allowances.
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9. Asset to be in use at the end of basis period.
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12. Residue.
13. Meaning of “disposed of”.
14. Value of an asset.
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17. Extension of meaning of “in use”.
18. Exclusion of certain expenditure.
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20. Asset used or expenditure incurred partly for the purpose of a trade or business.
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23. Partnerships.
24. Meaning of “allowances made”.
25. Claims for allowances.
26. Election in double taxation cases.
27. Manner of making allowances and charges.

FIFTH SCHEDULE

[Section 36.]

Capital allowances

1. Interpretation

For the purpose of this Schedule-

“**basis period**” has the meaning assigned to it by the following provisions of this definition-

- (a) in the case of an individual to or on whom an allowance or a charge falls to be made in accordance with the provisions of this Schedule, his basis period for a year of assessment shall be the period by reference to the profits of which an assessable income for that year falls to be computed, under the provisions of sections 23 to 31 of the Act;
- (b) such income means income in respect of the trade or business in which there was used an asset in connection with which the allowance or charge falls to be made:

Provided that, in the case of the trade or business-

- (i) where two basis periods overlap, the period common to both shall be deemed, except for the purpose of making an annual allowance, to fall in the basis period ending at the earlier date and in no other basis period;
- (ii) where two basis periods coincide, they shall be treated as overlapping, and the basis period for the earlier year of assessment shall be treated as ending before the end of the basis period for the later year of assessment;
- (iii) where there is an interval between the end of the basis period for one year of assessment and the basis period for the next year of assessment, then unless the second-mentioned year of assessment is the year in which an individual permanently ceases to carry on the trade or business, the interval shall be deemed to be part of the second basis period, and
- (iv) where there is an interval between the end of the basis period for the year of assessment preceding that in which the trade or business permanently ceases to be carried on by an individual and the basis period for the year in which it so ceases, the interval shall be deemed to form part of the first basis period;

“**concession**” includes a mining right and a mining lease;

“**lease**” includes an agreement for a lease where the term to be covered by the lease has begun, any tenancy and any agreement for the letting or hiring out of an asset, but does not include a mortgage, and the expression “**leasehold interest**” shall be construed accordingly and-

- (a) where, with the consent of the lessor, a lessee of an asset remains in possession thereof

after the termination of the lease without a new lease being granted to him, that lease shall be deemed for the purposes of this Schedule to continue so long as he remains in possession as aforesaid; and

- (b) where, on the termination of a lease of an asset, a new lease of that asset is granted to the lessee, the provisions of this Schedule shall have the effect as if the second lease were a continuation of the first lease;

“qualifying expenditure” means, subject to the express provisions of this Schedule, expenditure incurred in a basis period which is-

- (a) capital expenditure (hereinafter called “qualifying plant expenditure”) incurred on plant, machinery or fixtures;
- (b) capital expenditure (hereinafter called “qualifying building expenditure”) incurred on the construction of buildings, structures or works of a permanent nature, other than expenditure which is included in sub-paragraphs (a) or (c) of this definition;
- (c) capital expenditure (hereinafter called “qualifying mining expenditure”) incurred in connection with, or in preparation for, the working of a mine, oil well or other source of mineral deposits of a wasting nature (other than expenditure which is included in sub-paragraph (a) of this definition)-
 - (i) on the acquisition of, or of rights in or over, the deposits or on the purchase of information relating to the existence and extent of the deposit;
 - (ii) on searching for or on discovering and testing deposits, or winning access thereto; or
 - (iii) on the construction of any work or building which is likely to be of little or no value when the source is no longer worked or, where the source is worked under a concession, which is likely to become valueless when the concession comes to an end to the individual working the source immediately before the concession comes to an end; or
- (d) capital expenditure (hereinafter called “qualifying plantation expenditure”) incurred in connection with a plantation on the clearing of land for planting and on planting (other than replanting), and for the purposes of this definition where-
 - (i) expenditure is incurred for the purpose of a trade or business by an individual about to carry on that trade or business; and
 - (ii) that expenditure is incurred in respect of an asset owned by that individual,

then, if that expenditure would have fallen to be treated as qualifying expenditure had it been incurred by that individual on the first day on which he carries on that trade or business, that expenditure shall be deemed to be qualifying expenditure incurred by him on that day;

“trade or business” means trade or business or that part of a trade or business the profits of

which are assessable under this Act;

- (e) “capital expenditure” that is, “qualifying research and development expenditure” incurred-
 - (i) on equipment and facilities, patents, licences, secret formulas or process; or
 - (ii) for information concerning industrial, commercial or scientific process, technical feasibility or products or process and purchase; or
 - (iii) on searching for and discovering and testing products or process for future market or use and such other similar costs which has brought into existence an asset;
- (f) capital expenditure, that is, qualifying agricultural expenditure incurred on plant in use in agricultural trades and business within the meaning of section 9 of the Companies Income Tax Act;
[Cap. C21.]
- (g) capital expenditure, that is, qualifying public transportation motor vehicle expenditure, incurred on a fleet of buses of not less than three used for public transportation;
- (h) capital expenditure (hereinafter called “qualifying public transportation” (intercity) new mass transit coach of 25 seats and above operated by a recognised private establishment.

2. Year of assessment

The provisions of this Schedule with respect to the making of allowances and charges shall have effect for the year of assessment commencing on the 1st January, 1993 and for each succeeding year of assessment and any references in this Schedule to a year of assessment shall not include any year commencing prior to the 1st January, 1993.

3. Provisions relating to mining expenditure

- (1) For the purposes of this Schedule, where-
 - (a) qualifying mining expenditure has been incurred on the purchase of information relating to the existence and extent of the deposits or on searching for or on discovering and testing deposits or winning access thereto and the expenditure has been incurred for the purposes of a trade or business carried on by the individual incurring the expenditure, and such expenditure would have fallen to be treated as such qualifying mining expenditure if it had been incurred in a basis period;
 - (b) the expenditure has not brought into existence an asset; and
 - (c) the trade or business consists of the working of a mine, oil well or other source of mineral deposits of a wasting nature,

then such expenditure shall be deemed to have brought into existence an asset owned by the individual incurring the expenditure and in use for the purposes of the trade or business.

- (2) For the purpose of this Schedule, an asset in respect of which qualifying mining expenditure has been incurred by an individual for the purposes of a trade or business carried on by him and which has not been disposed of, shall be deemed not to cease to be used for the purposes of that trade or business so long as the individual continues to carry on that trade or business.
- (3) So much of a qualifying mining expenditure incurred on the acquisition of rights in or over mineral deposits and on the purchase of information relating to the existence and extent of the deposits as exceeds the total of the original cost of acquisition of those rights and of the cost of searching for, discovering and testing those deposits prior to the purchase of the information shall be left out of account for the purpose of this Schedule:

Provided that where the costs were originally incurred by a company which carried on a trade or business consisting, as to the whole or part thereof, in the acquisition of the rights or information with a view to the assignment or sale thereof, the price paid on the assignment or sale shall be substituted for the aforementioned costs.

4. Owner and meaning of relevant interest

- (1) For the purposes of this Schedule, where an asset consists of a building, structure or works the owner thereof shall be taken to be the owner of the relevant interest in the building, structure or works.
- (2) Subject to the provisions of this paragraph, in this Schedule, the expression “**the relevant interest**” means, in relation to an expenditure incurred on the construction of a building, structure or works, the interest in that building, structure or works to which the person who incurred the expenditure was entitled when he incurred it.
- (3) Where an individual incurs qualifying building expenditure or qualifying mining expenditure on the construction of a building, structure or works, he shall be entitled to two or more interests therein, and one of those interests is an interest which is reversionary on all the others, that interest shall be the relevant interest for the purposes of this Schedule.

5. Sale of buildings

- (1) Where capital expenditure has been incurred on the construction of a building, structure or works and thereafter the relevant interest therein is sold, the individual who buys that interest shall be deemed, for all the purposes of this Schedule except the granting of initial allowances, to have incurred, on the date when the purchase price became payable, capital expenditure on the construction thereof equal to the price paid by him for the interest or to the original costs of construction whichever is the less:

Provided that where the relevant interest is sold-

- (a) before the building, structure or works has been used, the foregoing provisions of this paragraph shall have effect with respect to the sale with the omission of the words “except the granting of initial allowances” and the original cost of construction shall be taken to be the amount of the purchase price on such sale;
- (b) more than once before the building, structure or works is used, the provisions of paragraph

(1) of this proviso shall have effect only in relation to the last of those sales.

6. Qualifying industrial building expenditure

For the purposes of this Schedule-

- (a) where but for this paragraph an individual is entitled to an annual allowance in respect of qualifying building expenditure in respect of an asset in use, for the purposes of a trade or business carried on by him, at the end of his basis period for any year of assessment commencing on or after the 1st January, 1993, then, if that asset is an industrial building or structure in use as such at the end of his basis period for any such year then, in lieu of such allowance and qualifying building expenditure, the qualifying expenditure in respect of that asset shall be taken to mean a qualifying industrial building expenditure for any allowance to be made to that individual, in respect of that qualifying expenditure, for that year; and
- (b) **“industrial building or structure”** means a building or structure in regular use-
 - (i) as a mill, factory, mechanical workshop, or other similar building, or as a structure used in connection with any such buildings;
 - (ii) as a dock, port, wharf, pier, jetty or other similar building structure;
 - (iii) for the operation of a railway for public use or of a water or electricity undertaking for the supply of water or electricity for public consumption; and
 - (iv) for the running of a plantation or for the working of a mine or other source of mineral deposits of a wasting nature.

7. Initial allowances

- (1) Subject to the provisions of this Schedule, where in his basis period for a year of assessment the owner of an asset has incurred in respect thereof qualifying expenditure wholly and exclusively for the purposes of a trade or business carried on by him, there shall be made to that individual for the year of assessment in his basis period for which that asset was first used for the purposes of that trade or business an allowance (in this Schedule called “an initial allowance”) at the appropriate rate *per centum*, set forth in the Table I to this Schedule, of the expenditure.

[Table I.]

- (2) Where capital expenditure is incurred on the purchase of an asset and either the purchaser is a person over whom the seller has control, or some other person has control over both the purchaser and the seller, then, the amount of an initial allowance to be made in respect of the expenditure shall be such an amount as the relevant tax authority may determine to be just and reasonable having regard to all circumstances relating to the asset and control:

Provided that the amount shall not exceed the amount of the initial allowance which would have been allowable apart from the provisions of this sub-paragraph.

8. Annual allowance

- (1) Subject to the provisions of this Schedule, where in his basis period for a year of assessment the owner of an asset has incurred in respect thereof qualifying expenditure wholly, exclusively, necessarily and reasonably for the purposes of a trade or business carried on by him, whether or not an initial allowance may be made to him in respect of that qualifying expenditure, there shall be made to that individual for each year of assessment in his basis period for which that asset was used for the purposes of that trade or business an allowance (hereinafter called “an annual allowance”) at the rate specified in respect thereof in Table II of this Schedule of the expenditure after the deduction of initial allowance where applicable:

[Table II.]

Provided that an amount of ₦10 shall be retained in the accounts for tax purposes until the asset is disposed of.

- (2) In the case of an asset in respect of which an allowance has been granted before the commencement of this sub-paragraph, an allowance shall be made in respect of the asset for the number of years of assessment which, if added to the number of years of assessment for which allowance has already been made, equals the number of years of assessment for which allowance is to be made under the provision of sub-paragraph (1) of this paragraph:

Provided that if an allowance has been made for a number of years which is equal to or more than the number of years specified under sub-paragraph (1) of this paragraph, a single allowance shall be made for an amount which is ₦10 less than the residue of the qualifying expenditure for the year of assessment in which this sub-paragraph takes effect.

9. Asset to be in use at end of basis period

An initial allowance or an annual allowance in respect of qualifying expenditure incurred in respect of an asset shall only be made to an individual for a year of assessment if at the end of his basis period for that year he was the owner of that asset and it was in use for the purposes of a trade or business carried on by him.

10. Balancing allowances

Subject to the provisions of this Schedule, where in his basis period for a year of assessment the owner of an asset, who has incurred in respect thereof qualifying expenditure wholly and exclusively for the purposes of a trade or business carried on by him, disposes of that asset, an allowance (hereinafter called “a balancing allowance”) shall be made to that individual for that year of the excess of the residue of that expenditure, at the date the asset is disposed of, over the value of that asset at that date:

Provided that a balancing allowance shall only be made in respect of the asset if immediately prior to its disposal it was in use by the owner in the trade or business for the purposes of which the qualifying expenditure was incurred.

11. Balancing charges

Subject to the provisions of this Schedule, where in his basis period for a year of assessment the

owner of an asset, who has incurred in respect thereof qualifying expenditure wholly and exclusively for the purposes of a trade or business carried on by him, disposes of that asset, a charge (hereinafter called “a balancing charge”) shall be made on that individual for that year of the excess of the value of that asset, at the date of its disposal, over the residue of that expenditure at the date:

Provided that a balancing charge shall only be made in respect of the asset if immediately prior to its disposal it was in use by the owner in the trade or business for the purposes of which the qualifying expenditure was incurred and shall not exceed the total of any allowances made under the provisions of this Schedule in respect of the asset and, in cases falling under paragraph 19 of this Schedule, of any allowance or deduction made under any income tax law in Nigeria in respect of the capital cost of the asset.

12. Residue

- (1) The residue of qualifying expenditure, in respect of an asset, at any date, shall be taken to be the total qualifying expenditure incurred on or before that date, by the owner thereof at that date, in respect of that asset, less the total of an initial or annual allowance made to the owner, in respect of that asset, before that date.
- (2) For the purposes of this paragraph, an initial allowance or annual allowance shall be deemed to be made at the end of the basis period for the year of assessment for which any such allowance is made.

13. Meaning of “disposed of”

Subject to an express provision to the contrary, for the purpose of this Schedule-

- (a) a building, structure or works of a permanent nature is disposed of if-
 - (i) relevant interest therein is sold; or
 - (ii) that interest, being an interest depending on the duration of a concession comes to an end on the coming to an end of that concession; or
 - (iii) that interest, being a leasehold interest, comes to an end otherwise than on the individual entitled thereto acquiring the interest which is reversionary thereon; or
 - (iv) the building, structure or works of a permanent nature is demolished or destroyed or without being demolished or destroyed, ceases altogether to be used for the purposes of a trade or business carried on by the owner thereof;
- (b) plant, machinery or fixture is disposed of if it is sold, discarded or ceases altogether to be used for the purposes of a trade or business carried on by the owner thereof;
- (c) an asset in respect of which qualifying mining expenditure is incurred is disposed of if it is sold or ceases to be used for the purposes of the trade or business of the individual incurring the expenditure either on that individual ceasing to carry on the trade or business or on that individual receiving insurance or compensation moneys, therefor.

14. Value of an asset

- (1) The value of an asset at the date of its disposal shall be the net proceeds of the sale thereof or of the relevant interest therein, or if it was disposed of without being sold, the amount which, in the opinion of the relevant tax authority, the asset or the relevant interest therein, as the case may be, would have fetched if sold in the open market at that date, less the amount of any expenses which the owner might reasonably be expected to incur if the asset were so sold.
- (2) For the purpose of this paragraph, if an asset is disposed of in such circumstances that insurance or compensation moneys are received by the owner thereof, the asset or the relevant interest therein, as the case may be, shall be treated as having been sold and as though the net proceeds of the insurance or compensation moneys were the net proceeds of the sale thereof.
- (3) So much of sub-paragraph (1) of this paragraph as relates to the circumstances for determining the value of an asset by reference to the disposal of the asset other than by way of sale shall have effect-
 - (a) in relation to an asset or the relevant interest therein disposed of, not being by way of bargain made at arm's length; or
 - (b) where the sale is between persons who are related to each other or between persons both of whom are controlled by some other person or one of whom has control over the other.

15. Apportionment

- (1) A reference in this Schedule to the disposal, sale or purchase of an asset includes a reference to the disposal, sale or purchase of that asset, as the case may be, together with any other asset, whether or not qualifying expenditure has been incurred on the last mentioned asset, and, where an asset is disposed of, sold, or purchased together with another asset, so much of the value of the assets as, on a just apportionment, is properly attributable to the first mentioned asset shall, for the purposes of this Schedule, be deemed to be the value of or the price paid for that asset, as the case may be.
- (2) For the purposes of sub-paragraph (1) of this paragraph, all the assets which are purchased or disposed of in pursuance of one bargain shall be deemed to be purchased or disposed of together, notwithstanding that separate prices are or purport to be agreed for each of those assets or that there are or purport to be separate purchases or disposals of those assets.
- (3) The provisions of sub-paragraph (1) of this paragraph shall apply, with any necessary modifications, to the sale or purchase of the relevant interest in an asset together with any other asset or relevant interest in any other asset.

16. Reference to asset to include part of an asset

A reference in this Schedule to an asset shall be construed whenever necessary as including a reference to a part of an asset (including an undivided part of that asset in the case of joint interest therein) and when so construed any necessary apportionment shall be made as may, in the opinion

of the relevant tax authority, be just and reasonable.

17. Extension of meaning of “in use”

- (1) For the purposes of this Schedule, an asset shall be deemed to be in use during a period of temporary disuse,
- (2) For the purposes of paragraphs 7, 8 and 9 of this Schedule-
 - (a) an asset in respect of which qualifying expenditure has been incurred by the owner thereof for the purposes of a trade or business carried on by him shall be deemed to be in use, for the purposes of that trade or business, between the dates hereinafter mentioned where the relevant tax authority is of the opinion that the first use to which the asset will be put by the individual incurring the expenditure will be for the purposes of that trade or business;
 - (b) those dates shall be taken to be the dates on which the expenditure was incurred and the date on which the asset is in fact first put to use:

Provided that where an allowance has been given in consequence of this subparagraph and the first use to which the asset is put is not for the purposes of the trade or business, all such additional assessments shall be made as may be necessary to counteract the benefit obtained from the giving of the allowance.

18. Exclusion of certain expenditure

Where an individual has incurred expenditure which is allowed to be deducted, in computing the gains or profits of his trade or business under section 20 of this Act, the expenditure shall not be treated as qualifying expenditure.

19. Application to lessor

- (1) Where the owner of an asset other than a building-
 - (a) has incurred capital expenditure in respect thereof for the purposes of leasing that asset for use wholly and exclusively for the purposes of a trade or business carried on or about to be carried on by a person;
 - (b) leases the asset to such person; and
 - (c) during the whole or part of the term of the lease, the asset is used wholly and exclusively by such person in such trade or business,

the provisions of this Schedule shall apply, with such necessary modifications as the relevant tax authority may direct, as though such expenditure were incurred wholly and exclusively for the purposes of a trade or business carried on by the owner from the date when such expenditure was incurred and as though the owner were using the asset for the purposes of such last mentioned trade or business in the way in which and for the period or periods during

which the asset is in fact used in the first-mentioned trade or business.

- (2) The provisions of sub-paragraph (1) of this paragraph shall apply in the case of a building leased by its owner to any other person as though such leasing were a trade or business carried on by the owner and, if he incurred the capital expenditure in respect of that building after the 31st day of March, 1955, irrespective of the use thereof intended by the owner at the time he incurred such expenditure.
- (3) For the purposes of this paragraph, in relation to the trade or business which an owner is to be treated as carrying on, his basis period for any year of assessment shall be taken to be the year immediately preceding that year of assessment.

20. Asset used or expenditure incurred partly for the purposes of a trade or business

- (1) The following provisions of this paragraph shall apply where either or both of the following conditions apply with respect to an asset
 - (a) the owner of the asset has incurred in respect thereof qualifying expenditure partly for the purpose of a trade or business carried on by him and partly for other purposes;
 - (b) the asset in respect of which qualifying expenditure has been incurred by the owner thereof is used partly for the purposes of a trade or business carried on by the owner and partly for other purposes.
- (2) An allowance and a charge which would be made if both expenditures were incurred wholly and exclusively for the purposes of the trade or business and the asset was used wholly and exclusively for the purposes of the trade or business, shall be computed in accordance with the provisions of this Schedule.
- (3) So much of the allowance and charge computed in accordance with the provisions of sub-paragraph (2) of this paragraph, shall be made as in the opinion of the relevant tax authority is just and reasonable having regard to all the circumstances and to the provisions of this Schedule.

21. Disposal without change of ownership

Where an asset in respect of which qualifying expenditure has been incurred by its owner has been disposed of in such circumstances that the owner remains the owner thereof, then for the purposes of determining whether and, if so, in what amount, an annual or balancing allowance or balancing charge shall be made to or on the owner in respect of his use of that asset after the date of such disposal, qualifying expenditure incurred by the owner in respect of the asset prior to the date of the disposal shall be left out of account:

Provided that the owner shall be deemed to have bought the asset immediately after the disposal for a price equal to the residue of the qualifying expenditure at the date of the disposal, increased by the amount of any balancing charge or decreased by the amount of any balancing allowance made as a result of the disposal.

22. Application to professions and vocations

In relation to qualifying plant expenditure, the provisions of this Schedule shall apply as if references to a profession or vocation, the profits of which are assessable under this Act, and in relation to qualifying building expenditure, those provisions shall apply as if references to a profession, the profits of which are assessable under this Act.

23. Partnerships

- (1) The provisions of this paragraph shall have effect for the purposes of this Schedule, in relation to a trade or business and the person or persons hereinafter mentioned carrying on the trade or business, throughout the period (hereinafter called “the relevant period”) being-
 - (a) a period during which the trade or business is carried on by persons in partnership and at least one of those persons, engaged in carrying on the trade or business as a partner in a partnership at any time, is so engaged immediately after that time, whether as a partner in the same partnership or as a partner in a different partnership carrying on the trade or business; or
 - (b) the aggregate of any of the following periods which are successive-
 - (i) a period, ending immediately prior to a person becoming a partner in a partnership carrying on the trade or business, during which the person was carrying on the trade or business on his own account;
 - (ii) a period ascertained under provision (a) of this sub-paragraph;
 - (iii) a period during which a person is carrying on the trade or business on his account, where that person was a partner in a partnership carrying on the trade or business immediately before that period.
- (2) The trade or business shall throughout the relevant period be deemed to be carried on by one and the same person (hereinafter called “the deemed person”) and an allowance or a charge which would then fall to be made to or on the deemed person, under the provisions of this Schedule if the deemed person were an individual, shall be computed as though the deemed person had done all things which were done for the purposes of the trade or business by the person or persons actually carrying on that trade or business during the relevant period.
- (3) For the purpose of this paragraph, a basis period for a year of assessment shall be such period as the relevant tax authority shall determine by reference to the provisions of the definition of “basis period” in paragraph 2 of this Schedule and to the provisions of subparagraph (2) of this paragraph:

Provided that, where at any time during the relevant period a person ceases to be engaged in carrying on the trade or business as a partner in a partnership or commences to be so engaged, the deemed person shall, for the purpose of determining basis periods under the provisions of this sub-paragraph and for that purpose only, be treated as having ceased to carry on the trade or business at that time and as having recommenced to carry on that trade or business immediately thereafter.

- (4) The amount of the computed allowance or charge in respect of an asset shall be allocated to the person, or apportioned amongst the persons, actually carrying on the trade or business, in the same manner as a capital loss, in the case of an allowance, or a capital gain, in the case of a charge, in respect of that asset would fall on or accrue to that person or those persons, if that loss or gain arose in the course of carrying on the trade or business and as a result of an event occurring-
- (a) in the case of an initial or annual allowance, at the end of the basis period by reference to which the allowance has been computed; and
 - (b) in the case of a balancing allowance or charge, at the date of the disposal of the asset.
- (5) An amount so allocated to or apportioned to an individual in respect of a computed allowance or charge shall be treated as an allowance or charge for the purposes of the provisions of this Schedule relating to deductions from and additions to the remainder of assessable income and shall be made to or on him for the year of assessment for which the amount of the allowance or charge has been so computed:

Provided that, where an allowance or a charge falls to be recomputed, as a result of the application of the proviso to sub-paragraph (3) of this paragraph, all such additional assessments or repayments of tax shall be made as may be necessary to give effect to the provisions of this paragraph.

- (6) For the purposes of the provisions of this paragraph, an asset is not disposed of within the meaning of paragraph 13 of this Schedule if the asset is used for the purpose of the trade or business during the relevant period and at least one of the persons actually engaged in carrying on the trade or business has an interest in the asset, or in the relevant interest therein, during the relevant period.
- (7) In the application of this paragraph with any of the provisions of the other paragraphs of this Schedule, those provisions shall be applied with any modifications which the relevant tax authority may consider necessary in order to give effect to the principles and provisions of this paragraph, and the relevant tax authority may, from time to time, prescribe rules embodying those modifications.

24. Meaning of “allowances made”

A reference in this Schedule to an allowance made includes a reference to an allowance which would be made but for an insufficiency of assessable income against which to make it.

25. Claims for allowances

No allowance shall be made to an individual for a year of assessment under the provisions of this Schedule unless claimed by him for that year or where the relevant tax authority is of the opinion that it would be reasonable and just so to do.

26. Election in double taxation cases

- (1) Where an individual makes a claim to an initial or annual allowance under this Schedule in connection with a trade or business, if the tax in respect of the profits of the trade or business is the subject of an arrangement, having effect by virtue of section 38 of this Act, between Nigeria and any other territory, for relief from double taxation, he may elect, at the time of making the claim or within such reasonable time thereafter as the relevant tax authority may allow, that allowance shall be calculated at a lesser rate than that provided for in paragraph 7 or 8 of this Schedule and in making the election he shall specify the amount of the lesser rate.
- (2) Where an election has been made under this paragraph, the amount of the lesser rate shall be taken to be the appropriate rate in relation to that allowance for all the purposes of this Schedule.

27. Manner of making allowances and charges

- (1) The amount of a charge to be made on an individual, under the provisions of this Schedule shall be made on him by making an addition to his assessable income for the year of assessment for which the charge falls to be made under the provisions of this Schedule:

Provided that where the charge falls to be made on an individual for a year of assessment, whenever necessary by reason of the assessment on that individual having become final and conclusive for that year or for other sufficient reason, the relevant tax authority may make an additional assessment on the individual in respect of the amount of the charge.

- (2) Subject to the provisions of this paragraph, the amount of an allowance to be made to an individual under the provisions of this Schedule shall be made to him by making a deduction from the remainder of his assessable income for the year of assessment for which the allowance falls to be made under the provisions of this Schedule.
- (3) For the purposes of this paragraph the remainder of the assessable income of an individual for a year of assessment shall be ascertained by first giving full effect to the provisions of sub-paragraph (1) of this paragraph and to the provisions of section 36 of this Act relating to the deduction of the amount of a loss.
- (4) Where full effect cannot be given to a deduction to be made under sub-paragraph (2) of this paragraph for a year of assessment owing to there being no remainder of assessable income for that year, or owing to the remainder for that year being less than the deduction, the deduction or part of the deduction to which effect has not been given, as the case may be, shall, for the purpose of ascertaining total income (of the individual entitled to the deduction) under section 36 of this Act for the following year, be deemed to be a deduction for that year, in accordance with the provisions of sub-paragraph (2) of this paragraph, and so on for succeeding years.
- (5) Where an individual is entitled to a deduction under sub-paragraph (4) of this paragraph, or to a deduction in respect of a balancing allowance, in respect of an asset used in a trade or business carried on by him, for a year of assessment in which that trade or business permanently ceases to be carried on by him and full effect cannot be given to the deduction for that year owing-

- (1) to there being no remainder of assessable income for that year; or
- (2) to the remainder of his assessable income for that year being less than the deduction,

that deduction or the part to which effect has not been given, as the case may be, may, on a claim being made by the individual, be given by way of a deduction from the remainder of his assessable income for the preceding year of assessment, and so on for other preceding years, so, however, that no such deduction shall be given by virtue of this subparagraph for any year earlier than the fifth year before the first-mentioned year of assessment:

Provided that where a relief is given under this sub-paragraph in respect of the deduction, the provisions of sub-paragraph (4) of this paragraph shall cease to have effect in respect of that deduction for any year of assessment subsequent to the year of assessment in which such trade or business ceases.

- (6) Where a deduction falls to be given under the provisions of sub-paragraph (5) of this paragraph for any preceding year of assessment, whenever necessary, by reason of any assessment for a year having become final and conclusive, or for other sufficient reason, the relevant tax authority may, with respect to the year, make such repayment or set-off of the tax, or of any part of such tax, paid or charged for the year, as may be appropriate, in lieu of making the deduction.
- (7) In giving effect to the provisions of sub-paragraph (2) of this paragraph, the amount of capital allowance to be deducted from assessable profits in any year of assessment shall not exceed $66 \frac{2}{3}$ % of such assessable profits of an individual, but any individual in the agro- allied industry or which is engaged in the trade or business of manufacturing shall not be affected by the restriction under this sub-paragraph.
- (8) For the purposes of this paragraph-

“an individual in the agro-allied industry” is a person who-

- (1) establishes or manages a plantation for the production of rubber, oil palm, cocoa, coffee, tea and similar crops;
- (2) cultivates or produces cereal crops, tubers, fruits of all kind, cotton, beans, groundnuts, sheanuts, beniseed, vegetables, pineapples, bananas and plantains;
- (3) establishes or manages animal husbandry, that is poultry, piggery, cattle rearing and the like and fish farming.

TABLES

TABLE I

[Paragraph 7.]

Initial allowance

	<i>Rate per centum</i>
Qualifying Expenditure in respect of-	
Qualifying Building Expenditure.....	5
Qualifying Industrial Building Expenditure	15
Qualifying Mining Expenditure	20
Qualifying Plant Expenditure (excluding Furniture and Fittings)	20
Plant Expenditure (Manufacturing, Construction and Agricultural Production).....	25
Qualifying Furniture and Fittings Expenditure.....	15
Qualifying Motor Vehicle Expenditure	25
Qualifying Motor Vehicle (Public Transportation Expenditure with at least 3 buses)...	30
Qualifying Plantation Equipment Expenditure	20
Qualifying Housing Estate Expenditure	20
Qualifying Ranching and Plantation Expenditure	30
Qualifying Research and Development Expenditure.....	25

TABLE II

[Paragraph 8.]

Annual allowance

	<i>Rate per centum</i>
Qualifying Expenditure in respect of	
Qualifying Building Expenditure.....	10
Qualifying Industrial Building Expenditure	10
Qualifying Mining Expenditure	10
Qualifying Plant Expenditure (excluding furniture and fittings).....	10
Qualifying Furniture and Fittings Expenditure.....	10
Qualifying Research and Development Expenditure.....	12 ½
Qualifying Housing Estate Expenditure	10
Qualifying Ranching and Plantation Expenditure	15
Qualifying Motor Vehicle Expenditure	20
Qualifying Plantation Equipment Expenditure.....	33 1/3

SIXTH SCHEDULE

[Section 37.]

INCOME TAX TABLE

[2011 No. 20.]

- (1) A consolidated relief allowance shall be granted on income at a flat rate of ₦200,000 plus 20 *per cent* of gross income.
- (2) *Tax Exempt*: The following deductions are tax exempt-
 - (a) National Housing Fund Contribution
 - (b) National Health Insurance Scheme
 - (c) Life Assurance Premium
 - (d) National Pension Scheme
 - (e) Gratuities
- (3) After the relief allowance and exemptions had been granted in accordance with paragraphs 1 and 2 of this Schedule, the balance of income shall be taxed as specified in the following tax table:

Tax Income Rates

Graduated Tax rates with consolidated allowance of ₦200,000 + 20 *per cent* of Gross Income, subject to a minimum tax of 1 *per cent* of Gross Income whichever is higher.

1. First ₦300,000 @ 7 *per cent*
2. Next ₦300,000 @ 11 *per cent*
3. Next ₦500,000 @ 15 *per cent*
4. Next ₦500,000 @ 19 *per cent*
5. Next ₦1,600,000 @ 21 *per cent*
6. Above ₦3, 200,000 @ 24 *per cent*

SEVENTH SCHEDULE

[Section 38 (5).]

Double taxation arrangements

The double taxation arrangements referred to in section 38 (5) of this Act are contained in the Double Taxation Relief between the Federal Republic of Nigeria and United Kingdom of Great Britain and Northern Ireland Order 1988 published as a subsidiary legislation under the Companies Income Tax Act and any other such arrangements between the Federal Republic of Nigeria and any other country published as subsidiary legislation.

The Order was made under powers conferred by the Companies Income Tax Act, this Act and the Petroleum Profits Tax Act.

[Cap. C21. Cap. P13]

EIGHTH SCHEDULE

[Section 53 (2).]

Warrant and authority to enter premises

To.....

Name of taxpayer.....

Incorporation or Identification No.....

Place of business taxpayer.....

Board of Internal Revenue in exercise of the powers vested in it by section 53 of the Personal Income Tax Act hereby authorises you to enter the premises, office, place of management or residence of the above-named taxpayer, office of the agent, factory or representative of the taxpayer suspected by the Board of fraud, wilful default, etc., in connection with the tax imposed under the aforesaid Act; and whose premises, office, place of management or residence of his principal officer, office of the agent, factor or representative is at

and

for the carrying out of your assignment, the said Board further authorises that you with the aid (if necessary) of your assistants and calling to your assistance a police officer, which assistance the police officer is by law required to give, search and remove (if necessary) such records, books and documents of the named taxpayer wherever they may be found either in possession of any employee of the taxpayer or any other person on his behalf.

And for the purpose of your entry into the aforementioned premises you are hereby authorised if necessary, with such assistance as aforesaid, to break open any building or place in the daytime.

Signed for and on behalf of the Board of Internal Revenue of

State Tax Authority at.....this.....day of.....20.....

Signature.....

*Chairman/Director
Board of Internal Revenue*

PETROLEUM INDUSTRY ACT, 2021

Section :

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SCHEDULES

PETROLEUM INDUSTRY ACT, 2021

ACT No. 6

AN ACT TO PROVIDE LEGAL, GOVERNANCE, REGULATORY AND FISCAL
FRAMEWORK FOR THE NIGERIAN PETROLEUM INDUSTRY, THE DEVELOPMENT
OF HOST COMMUNITIES; AND FOR RELATED MATTERS

[6th Day of August, 2021]

[Commencement]

ENACTED by the National Assembly of the Federal Republic of Nigeria-

CHAPTER 1 - GOVERNANCE AND INSTITUTIONS

PART I - VESTING AND OBJECTIVES

1. Vesting of Petroleum

The property and ownership of petroleum within Nigeria and its territorial waters continental shelf and exclusive economic zone is vested in the Government of the Federation of Nigeria.

2. Objective

The objectives of this Chapter are to -

- (a) create efficient and effective governing institutions, with clear and separate roles for the petroleum industry;
- (b) establish a framework for the creation of a commercially oriented and profit driven national petroleum company;
- (c) promote transparency, good governance and accountability in the administration of the petroleum resources of Nigeria;
- (d) foster a business environment conducive for petroleum operations; and
- (e) deepen local content practice in Nigeria oil and gas industry.

PART II-MINISTER OF PETROLEUM

3. Powers of the Minister

(1) The Minister shall-

- (a) formulate, monitor and administer government policy in the petroleum industry;
- (b) exercise general supervision over the affairs and operations of the petroleum industry in accordance with the provisions of this Act;
- (c) report developments in the petroleum industry to the government;
- (d) represent Nigeria at international organisations on petroleum matters;
- (e) promote an enabling environment for investment in the Nigerian petroleum industry;
- (f) negotiate treaties or other international agreements on matters pertaining to petroleum on behalf of the Government;
- (g) upon the recommendation of the Commission, grant petroleum prospecting licences and petroleum mining leases through the processes established in this Act;
- (h) upon the recommendation of the Commission and pursuant to the provisions of this Act and the regulations, revoke and assign interests in petroleum prospecting licences and petroleum mining leases;
- (i) delegate in writing to the Chief Executive of the Commission or Authority any power conferred on the Minister by or under this Act;
- (j) upon the recommendation of the Commission or Authority approve the fees for services rendered by the Commission or Authority in regulations; and
- (k) upon the recommendation of the Commission or the Authority, direct in writing the suspension of petroleum operations in any area-
 - (i) until arrangements to prevent danger to life or property have been made to his satisfaction, or
 - (ii) where in his opinion, a contravention of this Act or any regulation made under this Act has occurred or is likely to occur.

- (2) The Minister may order a cutback of the levels of crude oil or condensate production in the context of international oil pricing agreements supported by Nigeria.
- (3) The Minister shall have rights of pre-emption of petroleum and petroleum products marketed under any licence or lease in the event of a national emergency under the First Schedule to this Act.
- (4) The Minister shall give general policy directives to the Commission on matters concerning upstream petroleum operations and to the Authority on matters relating to midstream and downstream petroleum operations as well as matters related to co-operation among the two entities in line with the provisions of this Act and the Commission and the Authority shall comply with such directives.
- (5) The Minister shall cause the general policy directives issued under subsection (4) to be published in the Federal Government Gazette.

PART III-THE COMMISSION

4. Establishment of Nigerian Upstream Regulatory Commission

- (1) There is established the Nigerian Upstream Petroleum Regulatory Commission (in this Act referred to as "the Commission") which shall be a body corporate with perpetual succession and a common seal.
- (2) The Commission shall have the power to acquire, hold and dispose of property, sue and be sued in its own name.
- (3) The Commission shall be responsible for the technical and commercial regulation of upstream petroleum operations.

5. Application of this Part

The objects and functions of the Commission in this Part are limited to upstream petroleum operations.

6. Objectives of the Commission

The objectives of the Commission shall be to –

- (a) regulate upstream petroleum operations including technical, operational and commercial activities;
- (b) ensure compliance with all applicable laws and regulations governing upstream petroleum operations;

- (c) ensure that upstream petroleum operations are carried out in a manner to minimise waste and achieve optimal government revenues;
- (d) promote healthy, safe, efficient and effective conduct of upstream petroleum operations in an environmentally acceptable and sustainable manner;
- (e) ensure efficient, safe, effective and sustainable infrastructural development of upstream petroleum operations;
- (f) determine, administer and ensure the implementation and maintenance of technical standards, codes, practices and specifications applicable to upstream petroleum operations pursuant to good international petroleum industry practices;
- (g) implement government policies for upstream petroleum operations as directed by the Minister of Petroleum in accordance, with the provisions of this Act;
- (h) promote an enabling environment for investment in upstream petroleum operations;
- (i) ensure strict implementation of environmental policies, laws and regulations for upstream petroleum operations;
- (j) ensure the implementation of national policies for upstream petroleum operations; and
- (k) implement such other policies and objectives as are consistent with the provisions of this Act.

7. Technical regulatory functions of the Commission

The technical regulatory functions of the Commission include to -

- (a) enforce, administer and implement laws, regulations and policies relating to upstream petroleum operations;
- (b) ensure compliance with applicable national and international petroleum industry policies, standards and practices for upstream petroleum operations;
- (c) establish, monitor, regulate and enforce health, safety and environmental measures and standards relating to upstream petroleum operations including –
 - (i) management of petroleum reserves and installations, and
 - (ii) exploration, development and production activities within the onshore, frontier, shallow water and deep offshore acreages of Nigeria;
- (d) administer, monitor and enforce compliance with the terms and conditions of leases and licences granted and permits and authorisations issued to a company in respect of upstream petroleum operations;

- (e) set, define and enforce approved standards and regulations for design, construction, fabrication, operation and maintenance of plants, installations and facilities used or to be used in upstream petroleum operations including –
 - (i) crude oil and natural gas evaluation and management,
 - (ii) upstream natural gas gathering,
 - (iii) natural gas treatment, and
 - (iv) the elimination of natural gas flaring and venting;
- (f) keep public registers of –
 - (i) licences and leases granted by the Minister and permits and other authorisations issued by the Commission,
 - (ii) beneficial ownership, and
 - (iii) award, renewal, assignment, amendment, suspension and revocation;
- (g) carry out enquiries, tests, audits or investigations and take other steps to monitor the activities of licensees, lessees or permit holders;
- (h) establish and enforce standards relating to upstream petroleum operations;
- (i) undertake evaluation of national reserves and develop policies for prudent reservoir management practices;
- (j) maintain a Nigerian petroleum industry data bank comprising of materials, information and data acquired by, or submitted to, the Commission in the exercise of its statutory and regulatory functions;
- (k) require lessees, licensees and permit holders to furnish and publish specified information relating to upstream petroleum operations in this Act and the National Data Repository Regulation, 2020;
- (l) supervise and ensure accurate calibration and certification of equipment used for metering upstream petroleum operations, pursuant to applicable laws, and issue certificates of quality and quantity for petroleum produced;
- (m) publish reports and statistics on upstream petroleum operations to promote the growth of the petroleum industry;
- (n) advise the Minister on fiscal, operational, technical and other matters to enhance the upstream petroleum operations;

- (o) issue permits and other authorisations as may be necessary under an upstream licence or lease, including –
 - (i) seismic operations,
 - (ii) drilling operations, and
 - (iii) design, construction and operation of facilities for upstream petroleum operation;
- (p) establish special laboratories to provide data storage and testing, quality assurance and certification for upstream petroleum operations;
- (q) perform technical evaluation and assessments regarding submissions made to the Commission by licensees, lessees or permit holders involved in upstream petroleum operations;
- (r) keep records, data and reports obtained from upstream petroleum operations, as may be required under any Act or regulation and give directive to any person, company or entity in that regard;
- (s) manage and administer data regarding unallocated acreage;
- (t) conduct bidding rounds for the award of petroleum prospecting licences and petroleum mining leases pursuant to this act and applicable regulations;
- (u) when requested, provide, provide assistance to parties conducting upstream petroleum operation, where in the sole opinion of the Commission such assistance is merited;
- (v) approve field development plans for upstream petroleum operations as well as monitor its execution;
- (w) compute, determine, assess and ensure payment of royalties, rents, fees, and other charges for upstream petroleum operations as stipulated under this Act and any regulation;
- (x) establish parameters and codes of conduct for licensees, lessees or permit holders in the upstream petroleum operations;
- (y) monitor the financial viability of licensees, lessees or permit holders with respect to upstream petroleum operations;
- (z) develop, maintain and publish a database of upstream petroleum operation;
- (aa) subject to the confidentiality provisions of section 83 (7) of this Act, share information and data on the upstream petroleum operations with other government entities which have functions with respect to the petroleum sector;

- (bb) perform such other function as may be necessary to give effect to the provisions of this Act.
- (cc) ensure and monitor performance of industry players and quality of the provision of services of servicing companies in the upstream petroleum industry;
- (dd) conduct studies relating to the economy, efficiency and effectiveness of the upstream petroleum industry; and
- (ee) issue certificates of quality and quantity to exporters of crude oil, natural gas and petroleum products from integrated operations and crude oil export terminals established prior to the effective date and the Commission shall have the power to monitor and regulate the operations of crude oil export terminals and the responsibility of weights and measures at the crude oil export terminals shall cease to exist from the effective date.

8. Commercial regulatory functions of the Commission

The commercial regulatory functions of the Commission shall be to-

- (a) review and approve the commercial aspects of field development plans in the upstream petroleum operations;
- (b) develop cost studies and benchmarks for the evaluation of upstream petroleum operations taking into account petroleum industry specific issues, including field size, reservoir depth, location of operations, technology applied, production methods and petroleum quality;
- (c) allocate petroleum production quotas for the purpose of curtailing export of petroleum in conjunction with NNPC Limited pursuant to regulations; and
- (d) where in situ facilities or fixed or floating platforms or vessels provide for fully integrated upstream and midstream petroleum operations, the Commission shall consider and the Commission shall be in charge of such integrated operations and petroleum operations may be considered integrated where there is a joint use of utilities used exclusively for the upstream and midstream operations.

9. Functions of the Commission for frontier basins

- (1) The functions of the Commission with respect to frontier basins shall be to –
 - (a) promote the exploration of the frontier basins of Nigeria;
 - (b) develop exploration strategies and portfolio management for the exploration of unassigned frontier acreages in Nigeria;
 - (c) identify opportunities and increase information about the petroleum resources base within frontier basins in Nigeria; and

(d) undertake studies, analyse and evaluate unassigned frontier basins in Nigeria.

(2) Where data acquired and interpreted under a petroleum exploration licence, in the judgment of the Commission, require testing and drilling of identifiable prospects and leads, and no commercial entity has publicly expressed an intention of testing or drilling such prospects, the Commission shall, in line with section 64 (k) of this Act, request the services of NNPC Limited to drill or test such prospect and leads on a service fee basis to be charged to the Frontier Exploration Fund under this Act.

(3) Where commercial discovery is made under subsection (2), NNPC limited shall have the first right of refusal in the award of the acreage for subsequent development and other petroleum operations in such frontier acreages under this Act.

(4) There shall be maintained, for the purpose of this section, a Frontier Exploration Fund which shall be 30% of NNPC Limited's profit oil and profit gas as in the production sharing, profit sharing and risk service contracts.

(5) NNPC Limited shall transfer the 30% of profit oil and profit gas under subsection (4) to the Frontier Exploration Fund escrow account dedicated for the development of frontier acreages and utilise- the funds to carry out exploration and development activities in the frontier acreages subject to appropriation by the National Assembly.

10. Powers of the Commission

The Commission shall have power to –

(a) enforce the provisions of any –

(i) regulation made with respect to upstream petroleum operations,

(ii) regulations, policies or guidelines formerly administered by the Department of Petroleum Resources or the Petroleum Inspectorate, with respect to upstream petroleum operations, and

(iii) enactments with respect to the upstream petroleum industry made prior to the coming into force of this Act and any regulations made pursuant to powers given under them;

(b) seal up any premises, under section 217 of this Act, including any facility or plant engaged in upstream petroleum operations, where there has been a contravention of this Act or any regulations made under this Act;

(c) ensure compliance with the Nuclear Safety and Radiation Protection Act and such other legislative provisions as may be applicable in upstream petroleum operations;

- (d) set standards to promote the adoption of new technologies for upstream petroleum operations;
- (e) require lessees, licensees and permit holders to publish specified and non-proprietary information relating to upstream petroleum operations;
- (f) issue guidelines in accordance with the provisions of this Act or any regulation in respect of upstream petroleum operations;
- (g) recommend to the Minister the revocation or suspension of licences or leases in accordance with this Act and approve renewal of leases;
- (h) within the jurisdiction of the Commission, have access to –
 - (i) areas or rights of way regarding licences, leases or any related offices or buildings where information or data are available for inspection under this Act; and
 - (ii) all installations to which this Act applies, including plants and stations of every description, for the purpose of inspecting the operations conducted therein and enforcing the provisions of this Act and any regulations made under it;
- (i) impose on a petroleum prospecting licence, petroleum exploration licence or any petroleum mining lease to which this Act applies, special terms and conditions consistent with this Act at the grant or renewal of the licence or lease;
- (j) renew licenses and leases subject to the provisions of this Act; and
- (k) do such other things as are necessary and expedient for the effective and discharge of any of its functions under this Act.

11. Governing Board of the Commission

- (1) There is established a Governing Board (in this Act referred to as "the Board of the Commission") which shall be responsible for the policy and general administration of the Commission.
- (2) The Board of the Commission shall consist of-
 - (a) one non-executive chairman;
 - (b) two non-executive commissioners;
 - (c) the chief executive of the Commission (in this Act referred to as "the Commission Chief Executive");
 - (d) two other executive commissioners who are responsible for finance and accounts and exploration and acreage management;

- (e) one representative of the Authority not below the rank of Director;
- (f) one representative of the Ministry not below the rank of Director; and
- (g) one representative of the Ministry of Finance not below the rank of Director.

(3) Appointments to the Board of the Commission under subsection (2) shall be made by the President subject to confirmation by the Senate, except for the appointments of ex-officio members under subsection (2) (e), (f) and (g).

(4) A person appointed under subsection (2) (a) and (b) shall have at least 15 years post-qualification cognate experience in petroleum or other relevant sector of the economy and shall hold office for a period of five years and may be re-appointed for a further term of five years, on such terms and conditions as may be specified in the letter of appointment.

(5) Subject to subsection (4) of this section and section 18 (7) of this Act, a commissioner shall hold office for five years and may be re-appointed for a further term of five years.

(6) A non-executive commissioner shall hold office on part-time basis.

(7) The Board of the Commission may authorise in writing any commissioner, committee of the Board of the Commission, the Commission Chief Executive or any other officer or employee of the Commission, to exercise any power or carry out any duty or function of the Commission under this Act or regulation made under this Act.

(8) The proceedings of the Board of the Commission and other ancillary matters shall be as prescribed by regulation made under this Act.

12. Functions of the Board of the Commission

The Board of the Commission shall -

- (a) be responsible for the formulation of policy, supervision and giving strategic direction to the Commission;
- (b) provide general guidance for the carrying out of the functions of the Commission;
- (c) review and approve the business, strategic and operating plans of the Commission;
- (d) consider and approve the annual budget of the Commission before submission to the National Assembly for Appropriation;
- (e) approve the management accounts and audited accounts of the Commission and consider the management letter from the external auditors;
- (f) determine the terms and conditions of service of employees of the Commission;

- (g) recommend remuneration, allowances, benefits and pensions of employees of the Commission in consultation with the National Salaries, Incomes and Wages Commission, having regard to the
 - (i) specialised nature of work to be performed by the Commission,
 - (ii) need to ensure the financial self-sufficiency of the Commission, and
 - (iii) remuneration and allowances paid in the private sector in upstream petroleum operations to individuals with equivalent responsibilities, expertise and skills;
- (h) structure the Commission into such number of departments as it deems fit for the effective performance of the functions of the Commission; and
- (i) perform such other functions as may be necessary for the efficient and effective administration of the Commission under this Act.

13. Remuneration and allowances of the Board of the Commission

- (1) Commissioners shall be paid from the funds of the Commission such remuneration and allowances as applicable.
- (2) The Commission shall comply with the policy and guidelines of the National Salaries, Incomes and Wages Commission regarding remunerations.

14. Suspension or removal of members of the Board of the Commission

A member of the Board of the Commission may be suspended or removed from office by the President, where the member –

- (a) is found to be -
 - (i) unqualified for appointment under section 11 of this Act,
 - (ii) unqualified subsequent to his appointment, or
 - (iii) in breach of conflict of interest provisions in the Companies and Allied Matters Act or any regulation regarding conflicts of interest passed under this Act;
- (b) ceases to be an employee of the ministry or agency he represents on the Board of the Commission;

- (c) has demonstrated an inability to effectively discharge the duties of his office;
- (d) has been absent from the meeting of the Board of the Commission for three consecutive times without the consent of the Chairman or in the case of the Chairman, without the consent of the President, except where good reason is shown for the absence;
- (e) is found guilty of serious misconduct by a court or tribunal of competent jurisdiction; or
- (f) has, under the law in force in any country –
 - (i) been adjudged or declared bankrupt or insolvent and has not been discharged,
 - (ii) made an assignment to or arrangement or composition with his creditors which has not been rescinded or set aside, or
 - (iii) been declared to be of unsound mind.

15. Resignation of Non-Executive Commissioner

A non-executive commissioner may resign his appointment by giving two-month's written notice to the President.

16. Vacancy on the Board of the Commission

A vacancy on the Board of the Commission shall occur, where a commissioner-

- (a) dies;
- (b) is removed from office in accordance with section 14 of this Act;
- (c) resigns from office;
- (d) completes his tenure of office; or
- (e) is incapacitated.

17. Filling of vacancy on the Board of the Commission

A vacancy on the Board of the Commission shall be filled by the appointment of another person in accordance with section 11 of this Act.

18. Commission Chief Executive and Executive Commissioners

- (1) The Commission Chief Executive is the accounting officer and shall be responsible for the administration of the Commission.
- (2) There shall be six executive commissioners for the Commission with each responsible for one of the following –
 - (a) Exploration and Acreage Management;
 - (b) Development and Production;
 - (c) Health, Safety, Environment and Community;
 - (d) Economic Regulation and Strategic Planning;
 - (e) Corporate Services and Administration; and
 - (f) Finance and Accounts.
- (3) A person to be appointed as Commission Chief Executive and as an executive commissioner of the Commission shall have extensive managerial, technical or professional knowledge of the upstream petroleum operations with a minimum of 15 years post-qualification cognate experience.
- (4) The Commission Chief Executive shall be appointed on such terms and conditions as may be set out in the letter of appointment, except as otherwise provided for in this Act.
- (5) An Executive Commissioner shall be appointed on such terms and conditions as may be set out in the letter of appointment, except as otherwise provided for in this Act.
- (6) The Commission Chief Executive shall be appointed for an initial term of five years and may be re-appointed for a further term of five years, subject to confirmation by the Senate.
- (7) The President may, not later than 90 days prior to the expiration of the tenure of the Commission Chief Executive or an executive commissioner, re-appoint the Commission Chief Executive or Executive Commissioner or appoint another qualified person.
- (8) A person shall not be appointed as a Commission Chief Executive or an Executive Commissioner, where the person –
 - (a) is likely to be in breach of conflict of interest provisions under the Companies and Allied Matters Act or regulation made under this Act;
 - (b) has a financial interest in any business connected, directly or indirectly with the petroleum industry;
 - (c) is engaged in any activity for remuneration or otherwise connected with the petroleum industry;
 - (d) is a relative of a person who has an interest or is engaged in any of the activities under paragraphs (a)-(c), provided that-

- (i) such person may be appointed Commission Chief Executive or an Executive Commissioner if he declares his interest and makes appropriate arrangements to ensure the avoidance of a conflict of interest,
 - (ii) the President is satisfied that the interest or activity shall not interfere with the person's impartial discharge of his duties as the Commission Chief Executive or an executive commissioner, or
 - (iii) the financial interest is terminated prior to the appointment taking effect; or
- (e) has, under the laws in force in any country-
- (i) been adjudged or declared bankrupt or insolvent and has not been discharged,
 - (ii) made an assignment to, or arrangement or composition with his creditors, which has not been rescinded or set aside,
 - (iii) been declared to be of unsound mind,
 - (iv) been convicted of any criminal offence by a court of competent jurisdiction except for traffic offences, or
 - (v) been disqualified or suspended from practising his profession by the order of a competent authority.

19. Employees of the Commission

The Board of the Commission shall determine the number of persons that shall be employees of the Commission.

20. Terms and condition of the service in the Commission

- (1) The employees of the Commission shall be subject to terms and conditions of service set out by the Board of the Commission.
- (2) The terms and conditions of service referred to in subsection (1) may provide for-
 - (a) the appointment, promotion, dismissal and discipline of employees;
 - (b) appeals by employees against dismissal or other disciplinary measures; and
 - (c) the grant of pensions, gratuities and other retirement benefits to employees.
- (3) In this section, "appointment" includes secondment, transfer and contract appointments.
- (4) Employees of the Commission shall be "public Constitution of the Federal Republic of Nigeria.
- (5) Employment by the Commission shall be subject to the provisions of the Pension Reform Act and officers and employees of the Commission shall be entitled to pension and other retirement benefits as prescribed under the Pensions Reform Act.

- (6) Nothing in subsection (5) shall prevent the Commission from appointing a person to an office on terms that preclude the grant of pension or other retirement benefits in respect of that office.

21. Remuneration and allowances of employees of the Commission

The Board of the Commission, in consultation with the National Salaries, Incomes and Wages Commission, shall determine and periodically review the remuneration and allowances payable to the employees of the Commission, having regard to the-

- (a) specialised nature of work to be performed by the employees of the Commission;
- (b) need to ensure the financial self-sufficiency of the Commission; and
- (c) remuneration and allowances paid within the petroleum industry to individuals with equivalent responsibilities, expertise and skills.

22. Statement of estimated income and expenditure of the Commission

- (1) The Commission shall, not later than 30th of September of each year or such other date that the Minister responsible for Budget and National Planning may determine, prepare and present to the National Assembly, a statement of estimated income and expenditure of the Commission for the next financial year.
- (2) Notwithstanding the provisions of this section, the Commission may, in each financial year, submit to the National Assembly, supplementary or adjusted statements of estimated income and expenditure of the Commission.
- (3) The financial year of the Commission shall be a period of 12 calendar months commencing on the 1st of January in each year or such other date as the Minister or Finance may determine.

23. Secretary of the Commission

- (1) The Board of the Commission shall appoint a Secretary, who shall-
 - (a) be the Legal Adviser to the Commission;
 - (b) attend meetings of the Board of the Commission and keep minutes, corporate records and the common seal of the Commission; and
 - (c) carry out such administrative and other secretarial duties as the Commission Chief Executive and the Board of the Commission may direct.
- (2) The Secretary shall be a legal practitioner with a minimum of 10 years post- qualification experience.

24. Fund of the Commission

- (1) The Commission shall maintain a fund (in this Act referred to as "the Commission Fund of the Commission Fund") into which money accruing to the Commission shall be paid and all expenditures of the commission shall be subject to appropriation by the National Assembly.
- (2) The source of the Commission Fund shall be as follows –
 - (a) money appropriated by the National Assembly for the Commission;
 - (b) fees charged by the Commission for services rendered to licensees, lessees, permit holders and other authorisations issued by the Commission;
 - (c) cost of collection by the Commission;
 - (d) income derived from publications made by the Commission and other related activities, including data sales;
 - (e) fees paid to the Commission for using facilities owned or managed by the Commission; and
 - (f) money accruing to the Commission by way of grants, aids, gifts, testamentary dispositions, endowments and contributions.
- (3) The Commission Fund shall be applied –
 - (a) to meet approved budgetary obligations of the Commission;
 - (b) to meet administrative and operating cost of the Commission;
 - (c) to pay salaries, wages, fees or other remuneration or allowances, pensions and other retirement benefits payable to employees of the Commission;
 - (d) to acquire and maintain any property acquired by or vested in the Commission;
 - (e) for investments, as provided under the Trustee Investments Act or any other applicable legislation, subject to the approval of Minister responsible for Finance; and
 - (f) in connection with any of the functions of the Commission under this Act.
- (4) The Commission shall ensure that money accruing from royalties and rents charged under this Act or any subsidiary legislation made under this Act on royalties and rents are paid into the Federation Account.

- (5) At the end of each financial year, any money that accrued to the Commission Fund under subsection (2), which have not been utilised for the purposes provided under subsection (3), shall be paid into the Consolidated Revenue Fund.
- (6) The Commission may accept grants of money or property on such terms and conditions as may be specified by the person or organisation making the grant, provided that –
- (a) the terms and conditions of the grant are consistent with the objectives and functions of the Commission; or
 - (b) no such grant is accepted from any person or organisation regulated by the Commission.
- (7) Nothing in subsection (6) or under this Act shall be construed as authorising the Commission Chief Executive, commissioners, officer or employee of the Commission to accept any grant for their personal use.
- (8) The Commission shall keep proper accounts of its income and expenditure for each financial year and cause it to be audited within six months after the end of each financial year by auditors appointed by the Commission from a list of auditors approved in accordance with guidelines, supplied by the Auditor-General for the Federation.
- (9) The Commission shall submit to the Minister –
- (a) a mid-year report of its operations and finances not later than the 31st of August of each year;
 - (b) an annual report of its operations and performance; and
 - (c) an audited financial account for the year, not later than 31st of March of the following year.
- (10) The Commission shall, not later than the 31st of March of each year-
- (a) submit to the Minister a summary of its annual report and audited financial accounts; and
 - (b) publish the annual report and audited financial accounts on its website.
- (11) The provisions of any enactment relating to the taxation of companies or trust funds shall not apply to the Commission.

25. Notice to the Commission

- (1) Any Government ministry, department or agency exercising any power or function or taking any action, which may have direct impact on upstream petroleum operations shall consult with the Commission prior to –
 - (a) issuing any regulation, guideline, enforcement order or directive;
 - (b) exercising any such power or function; or taking any such action.
- (2) The Commission shall review the recommendations of the Government ministry, department or agency and communicate decision accordingly and such decision shall be complied with by the relevant Government ministry, department or agency.

26. Special powers of the Commission

- (1) The Commission shall in performing its functions under this Act have special powers to-
 - (a) Inquire, inspect examine or investigate any business or activity relating to upstream petroleum operations under this Act, where it believes that illegal upstream petroleum operations are going on;
 - (b) conduct surveillance on crude oil and natural gas installations, premises and vessels where it believes that illegal upstream petroleum operations are going on
 - (c) enter any upstream wellsite, plant, facility or place –
 - (i) at which crude oil or natural gas is produced, handled or treated, or
 - (ii) that is used in connection with any upstream wellsite, plant, facility or place where crude oil or natural gas is produced, handled or treated;
 - (d) enter at any reasonable time premises containing any records or property required to be maintained under this Act or related to the administration of upstream petroleum operations under this Act for the purpose of inspecting those records or that property;
 - (e) require any person or his agent, representative, partner, director, officer or employee engaged in upstream petroleum operations to –
 - (i) answer any question that may be relevant to the inquiry, inspection, examination or investigation, and
 - (ii) provide any required information contained in a computer hardware or software or any other data storage, processing or retrieval device or system used in connection

- with the business or activities relating to upstream petroleum operations under this Act;
- (f) take any sample or carry out any test or examination as it may consider necessary in the performance of its functions;
 - (g) use any machinery, equipment, appliance or thing as it may consider necessary in the performance of its functions;
 - (h) remove for examination and copy anything that may be relevant to the inquiry, inspection, examination or investigation, including removing any computer hardware or software or any other data storage, processing or retrieval device or system, during which copyright and trade secrets shall be properly protected;
 - (i) in conjunction with the Nigeria Police or other law enforcement agencies, arrest with a warrant, any person reasonably believed to have committed an offence under this Act; and
 - (j) exercise any other power that may be conferred on it under any law or regulation.
- (2) An entity, person or agent, representative, partner, director, officer or employee of that entity or person under investigation by the Commission shall-
- (a) grant access to officers of the Commission with regard to any place, wellsite, plant, facility, upstream machinery, equipment, appliances or things that may be relevant to the investigation; and
 - (b) provide on request, any book, account, record, document, voucher, information and explanation relating to upstream petroleum operations as the officers of the Commission may require.
- (3) An entity, person or agent, representative, partner, director, officer or employee of that entity or person who fails to comply with subsection (2) commits an offence and is liable on conviction to -
- (a) a minimum fine of ₦5,000,000 or a term of five years imprisonment; and
 - (b) in the case of a continuous offence, to an additional minimum fine of ₦100,000 for each day during which the offence continues.
- (4) The Commission shall in the exercise of its powers under this section avoid undue hindrance of entities and persons engaged in lawful upstream petroleum operations.

- (5) The Commission can seal or close any premises or facility utilised for purpose of upstream petroleum operations if the licensee, lessee or permit holder is found to be in breach of the relevant provisions of this Act.

27. Special Investigation Unit

The special powers of the Commission under section 26 of this Act shall be performed by the Special Investigation Unit of the Commission or any person authorised by the Commission.

28. Indemnity of officers of the Commission

- (1) The Commission Chief Executive, a commissioner or any officer of the Commission shall each be indemnified out of the Commission Fund against any liability incurred in defending any proceeding against the Commission or brought against him in his official capacity.
- (2) Notwithstanding the provisions of subsection (1), the Commission shall not indemnify the Commission Chief Executive, a commissioner or any officer of the Commission for any liability incurred as a result of wilful misconduct or gross negligence.

PART IV. THE AUTHORITY

29. Establishment of the Nigerian Midstream and Downstream Petroleum Regulatory Authority

- (1) There is established the Nigerian Midstream and Downstream Petroleum Regulatory Authority (in this Act referred to as "the Authority"), which shall be a body corporate with perpetual succession and a common seal.
- (2) The Authority shall have the power to acquire, hold and dispose of property, sue and be sued in its own name.
- (3) The Authority shall be responsible for the technical and commercial regulation of midstream and downstream petroleum operations in the petroleum industry.

30. Application of this Part

The objects and functions of the Authority in this Part are limited to midstream and downstream petroleum operations in the petroleum industry.

31. Objectives of the Authority

The objectives of the Authority shall be to-

- (a) regulate midstream and downstream petroleum operations, including technical, operational, and commercial activities;

- (b) ensure efficient, safe, effective and sustainable infrastructural development of midstream and downstream petroleum operations;
- (c) promote healthy, safe, efficient and effective conduct of midstream and downstream petroleum operations in an environmentally acceptable and sustainable manner;
- (d) promote a competitive market for midstream and downstream petroleum operations;
- (e) promote the supply and distribution of natural gas and petroleum products in midstream and downstream petroleum operations and the security of natural gas supply for the domestic gas market;
- (f) ensure compliance with applicable laws and regulations governing midstream and downstream petroleum operations;
- (g) ensure crude oil supply for domestic refineries;
- (h) determine, administer and ensure the implementation and maintenance of technical standards, codes, practices and specifications applicable to midstream and downstream petroleum operations pursuant to good international petroleum industry practices;
- (i) implement Government policies for midstream and downstream petroleum operations as directed by the Minister and in accordance with this Act;
- (j) promote, establish and develop a positive environment for international and domestic investment in midstream and downstream petroleum operations;
- (k) ensure strict implementation of environmental policies, laws and regulations for midstream and downstream petroleum operations;
- (l) develop and enforce a framework on tariff and pricing for natural gas and petroleum products; and
- (m) implement such other policies and objectives as are consistent with the provisions of this Act.

32. Functions of the Authority

The functions of the Authority shall be to –

- (a) regulate and monitor technical and commercial midstream and downstream petroleum operations in Nigeria;
- (b) regulate commercial midstream and downstream petroleum operations, including

- (i) Petroleum liquids operation
 - (ii) domestic natural gas operations, and
 - (iii) exploit natural gas operations;
- (c) determine appropriate tariff methodology, including for –
- (i) processing of natural gas,
 - (ii) transportation and transmission of natural gas,
 - (iii) bulk storage of crude oil and natural gas
- (d) setting cost benchmarks for midstream and downstream petroleum operations;
- (e) provide pricing and tariff frameworks for natural gas in midstream and downstream gas operations and petroleum products based on the fair market value of the applicable petroleum products;
- (f) advise the Government, government agencies and other stakeholders on commercial matters relating to tariff and pricing frameworks;
- (g) develop open access rules applicable to petroleum liquids and natural gas transportation pipelines, terminal facilities and bulk storage facilities;
- (h) regulate the bulk storage, distribution, marketing and transportation pipelines of petroleum products;
- (i) grant, issue, modify, extend, renew, review, suspend, cancel, reissue or terminate licences, permits and authorisations for midstream and downstream petroleum operations;
- (j) monitor and enforce compliance with the terms and conditions of licences, permit and authorisation issued by the Authority;
- (k) keep public registers of –
- (i) licences, permits and other authorisations issued by the Authority, and
 - (ii) renewals, assignments, amendments, suspensions or revocations;
- (l) set, define and enforce approved standards and regulations for design, construction, fabrication, operation and maintenance of plants, installations and facilities used or to be used in midstream and downstream petroleum operations;

- (m) carry out enquiries, tests, audits or investigations and take other steps to monitor the midstream and downstream petroleum operations;
- (n) ensure security of supply, development of the markets and competition in the markets for natural gas and petroleum products;
- (o) ensure third party access to facilities under gas processing licences, transportation pipelines and transportation networks and midstream bulk storage facilities, where such facilities are operated for the account of the owner;
- (p) develop rules for trading in wholesale gas supplies to gas distributors;
- (q) establish customer protection measures in accordance with the provisions of this Act;
- (r) publish decisions, directions or determinations of the Authority that have implications for customers and industry participants, together with the reasons for such decisions, directions or determinations which, in the opinion of the Authority, shall be published;
- (s) promote the interests of customers with regard to midstream and downstream petroleum operations;
- (t) promote the principles of economic development of infrastructure with regard to midstream and downstream petroleum operations;
- (u) promote competition and private sector participation in midstream and downstream petroleum operations;
- (v) determine the domestic gas demand requirement and the crude oil required for the domestic crude oil supply obligation and ensure that economic and strategic domestic demands are met;
- (w) regulate the supply, distribution, marketing and retail of petroleum products;
- (x) administer and monitor strategic stocks of petroleum products;
- (y) monitor the application of petroleum product prices, pricing formulae and frameworks;
- (z) monitor market behaviour with respect to midstream and downstream petroleum operations;
- (aa) identify, investigate and prevent abuse of dominant positions and restrictive business practice with regard to midstream and downstream petroleum operations;

- (bb) establish, monitor, regulate and enforce technical, health, environmental and safety measures relating to midstream and downstream petroleum operations;
- (cc) develop, specify and monitor technical and safety standards for wholesale marketing, processing plant, retail marketing and bunkering of petroleum products;
- (dd) ensure the accuracy of metering pumps and related measurement facilities in midstream and downstream petroleum operations;
- (ee) define and enforce approved standards and guidelines for the design, procurement, construction, operation and maintenance of plants, installations and facilities in the midstream and downstream petroleum operations;
- (ff) establish laboratories to provide data storage and testing, quality assurance and certification of crude oil, natural gas and petroleum products and regulate the activities of third party laboratories used in midstream and downstream petroleum operations;
- (gg) keep and classify records, data and reports as may be prescribed in regulations or guidelines;
- (hh) ensure the promotion of safety and development of midstream and downstream petroleum operations;
- (ii) issue certificates of quality and quantity to exporters of crude oil, LNG and petroleum products;
- (jj) implement and enforce compliance with laws, regulations and policies relating to midstream and downstream petroleum operations;
- (kk) establish parameters and codes of conduct for operators in the midstream and downstream petroleum operations;
- (ll) monitor the financial viability of operators with respect to midstream and downstream petroleum operations;
- (mm) develop, maintain and publish a database of midstream and downstream petroleum operations;
- (nn) monitor and ensure that the quality of petroleum products sold in Nigeria conform to defined specifications;
- (oo) establish, monitor and ensure compliance with the standards for the processing of petroleum products in Nigeria;

- (pp) request information and documents relating to licenced activities, including pricing information and macro economic data from any licensee or permit holder in midstream and downstream petroleum operations;
- (qq) publish or direct licensees, lessees and permit holders to publish, in the interest of the public, information relating to midstream and downstream petroleum operations in accordance with applicable law or regulation;
- (rr) regulate the domestic base price and the prices applicable to wholesale customers of the strategic sectors and gas distributors;
- (ss) perform such other function as may be necessary to give effect to the provisions of this Act;
- (tt) ensure and monitor performance parameters of industry players and the quality of service provided by servicing companies in the midstream and downstream petroleum industry; and
- (uu) conduct studies relating to the economy and efficiency and effectiveness of the midstream and downstream petroleum industry.

33. Regulations by the Authority

Subject to section 216 of this Act, the Authority may make regulations-

- (a) concerning the processing, refining, transmission, distribution, supply, sale and storage of petroleum and petroleum products as well as other midstream and downstream petroleum operations;
- (b) establishing those midstream and downstream petroleum operations to be subject to a licence or permit from the Authority;
- (c) establishing the application criteria and procedure for licences and permits for midstream and downstream petroleum operations;
- (d) establishing the procedure for review and approval of licence and permit applications for midstream and downstream petroleum operations;
- (e) establishing the duration and conditions of licences and permits for midstream and downstream petroleum operations;
- (f) concerning those licences and permits already in effect prior to the date of any regulations issued by the authority for midstream and downstream petroleum operations;
- (g) establishing the conditions and procedures for the transfer, surrender, suspension or revocation of licences and permits for midstream and downstream petroleum operations;

- (h) establishing the procedure for the modification of licences and permits for midstream and downstream petroleum operations;
- (i) establishing the penalties and enforcement mechanisms in respect of breaches of the regulations issued by the Authority;
- (j) monitoring processes for midstream and downstream petroleum operations;
- (k) concerning the construction and operation of and third party access to, infrastructure for midstream and downstream petroleum operations;
- (l) concerning the production, transportation, and sale of petrochemicals and lubricants;
- (m) concerning the national strategic stock;
- (n) establishing tariffs for midstream and downstream petroleum operations;
- (o) concerning domestic natural gas supply and demand;
- (p) concerning natural gas trading and export;
- (q) ensuring the continuity and security of the supply of natural gas, crude oil and petroleum products to customers;
- (r) concerning rights of way and pertaining to surface rights;
- (s) relating to the retail sale and distribution of petroleum products;
- (t) concerning dispute resolution and customer protection;
- (u) regulating pricing regimes for midstream and downstream petroleum operations;
- (v) establishing fees payable to the Authority subject to section 3 (1) (j) of this Act;
- (w) concerning competition and anti-competitive behaviour;
- (x) establishing public and non-public registries in respect of licences, permits and authorisations issued by the Authority, to be maintained by the Authority; and
- (y) any other matters as may be determined by the Authority under this Act which includes imposition of gas flare penalty arising from midstream operations which shall be for the credit of the Midstream and Downstream Gas Infrastructure Fund, and shall be utilised for midstream and downstream gas infrastructure investment within the Host Community of a designated facility.

34. Governing Board of the Authority

- (1) There is established a Governing Board (in this Act referred to as "the Board of the Authority"), which shall be responsible for the policy and general administration of the Authority.
- (2) The Board of the Authority shall consist of –
 - (a) one non-executive chairman;
 - (b) two non-executive members;
 - (c) The Chief Executive of the Authority (in this Act referred to as "the Authority Chief Executive");
 - (d) two other executive directors responsible for finance and accounts and distribution systems, storage and retailing infrastructure;
 - (e) one representative of the Commission not below the rank of executive commissioner;
 - (f) one representative of the Ministry not below the rank of Director; and
 - (g) one representative of the Ministry of Finance not below the rank of Director.
- (3) Appointments to the Board of the Authority under this section shall be made by the President and be subject to confirmation by the Senate, except for the appointments of ex-officio members under subsection (2) (e), (f) and (g).
- (4) A person appointed under subsection (2) (a) and (b) shall have at least 15 years post-qualification experience in petroleum or other relevant sector of the economy and shall hold office for a period of five years and may be re-appointed for a further term of five years, on such terms and conditions as may be specified in the letter of appointment.
- (5) Subject to subsection (4) and section 41 (3) of this Act, a member of the Board of the Authority shall hold office for five years and may be re-appointed for a further term of five years.
- (6) A non-executive Board member shall hold office on part-time basis.
- (7) The Board of the Authority may authorise in writing any executive director, committee of the Board of the Authority, the Authority Chief Executive or any other officer or employee of the Authority, to exercise any power or carry out any duty or function of the Authority under this Act or regulation made under this Act.

- (8) The proceedings of the Board of the Authority and other ancillary matters shall be as prescribed by regulation made under this Act.

35. Functions of the Board of the Authority

The Board of the Authority shall -

- (a) be responsible for the formulation of policy, supervision and giving strategic direction to the Authority;
- (b) provide general guidance for the carrying out of the functions of the Authority;
- (c) review and approve the business, strategic and operating plans of the Authority;
- (d) consider and approve the annual budget of the Authority before submission to the National Assembly for appropriation;
- (e) approve the management accounts and audited accounts of the Authority and consider the management letter from the external auditors;
- (f) determine the terms and conditions of service of employees of the Authority;
- (g) recommend remuneration, allowances, benefits and pensions of employees of the Authority in consultation with the National Salaries Incomes and Wages Commission, having regard to the-
 - (i) specialised nature of work to be performed by the Authority,
 - (ii) need to ensure the financial self-sufficiency of the Authority, and
 - (iii) remuneration and allowances paid in the private sector in upstream petroleum operations to individuals with equivalent responsibilities, expertise and skills;
- (h) structure the Authority into such number of departments as it deems fit for the effective performance of the functions of the Authority; and
- (i) performance of other functions as may be necessary for the efficient and effective administration of the Authority under this Act.

36. Remuneration and allowances of members of the Board of the Authority

- (1) Executive directors of the Authority shall be paid from the funds of the Commission such remuneration and allowances as applicable.

- (2) The Authority shall comply with the policy and guidelines of the National Salaries, Incomes and Wages Commission regarding remunerations.

37. Suspension or removal of a member of the Board of the Authority

A member of the Board of the Authority may be suspended or removed from office by the President where the member-

- (a) is found to be
 - (i) unqualified for appointment under section 34 of this Act,
 - (ii) unqualified subsequent to his appointment, and
 - (iii) in breach of conflict of interest provisions in the Companies and Allied Matters Act or any regulation regarding conflicts of interest passed under this Act;
- (b) ceases to be an employee of the ministry or agency he represents on the Board of the Authority;
- (c) has demonstrated an inability to effectively discharge the duties of his office;
- (d) has been absent from the meeting of the Board of the Authority for three consecutive times without the consent of the Chairman or in the case of the Chairman, without the consent of the President, except where good reason is shown for the absence;
- (e) is found guilty of serious misconduct by a court or tribunal of competent jurisdiction; or
- (f) has, under the law in force in any country –
 - (i) been adjudged or declared bankrupt or insolvent and has not been discharged,
 - (ii) made an assignment to or arrangement or composition with his creditors which has not been rescinded or set aside, or
 - (iii) been declared to be of unsound mind.

38. Resignation of non-executive member of the Board of the Authority

A non-executive member of the Board of the Authority may resign his appointment by giving two months written notice to the President.

39. Vacancy on the Board of the Authority

A vacancy on the Board of the Authority shall occur, where a member of the Board –

- (a) dies;

- (b) is removed from office in accordance with section 17 of this Act;
- (c) resigns from office;
- (d) completes his tenure of office; or
- (e) is incapacitated.

40. Filling of vacancy on Board of the Authority

A vacancy on the Board of the Authority shall be filled by the appointment of another person in accordance with section 34 of this Act

41. Authority Chief Executive and Executive Directors of the Authority

- (1) The Authority Chief Executive is the accounting officer and shall be responsible for the administration of the affairs of the Authority.
- (2) There shall be seven executive directors for the Authority, whose appointments shall comply with the Federal Character Commission Act subject to confirmation by the Senate with each responsible for one of the following-
 - (a) Hydrocarbon Processing Plants, Installations and Transportation Infrastructure;
 - (b) Distribution Systems, Storage and Retailing Infrastructure;
 - (c) Health, Safety, Environment and Community;
 - (d) Economic Regulations and Strategic Planning;
 - (e) Corporate Services and Administration;
 - (f) Finance and Accounts; and
 - (g) Midstream and Downstream Gas Infrastructure Fund.
- (3) A person to be appointed as Authority Chief Executive and as an executive director of the Authority shall have extensive managerial, technical or professional knowledge of the midstream and downstream petroleum operations with a minimum of 15 years post-qualification cognate experience.
- (4) The Authority Chief Executive shall be appointed on such terms and conditions as may be set out in the letter of appointment, except as otherwise provided for in this Act.

- (5) An executive director shall be appointed on such terms and conditions as may be set out in the letter of appointment, except as otherwise provided for in this Act.
- (6) The Authority Chief Executive shall be appointed for an initial term of five years and may be re-appointed for a further term of five years, subject to confirmation by the Senate.
- (7) The President may, not later than 90 days prior to the expiration of the tenure of the Authority Chief Executive or an executive director, re-appoint the Authority Chief Executive or executive director or appoint another qualified person.
- (8) A person shall not be appointed as Authority Chief Executive, where the person-
- (a) is likely to be in breach of conflict of interest provisions under the Companies and Allied Matters Act or regulation made under this Act;
 - (b) has a financial interest in any business connected, directly or indirectly with the petroleum industry;
 - (c) is engaged in any activity for remuneration or otherwise connected with the petroleum industry;
 - (d) is a relative of a person who has an interest or is engaged in any of the activities under paragraphs (a) - (c), provided that
 - (i) such person may be appointed Authority Chief Executive or as an executive director if he declares his interest and makes appropriate arrangements to ensure the avoidance of a conflict of interest,
 - (ii) the President is satisfied that the interest or activity shall not interfere with the person's impartial discharge of his duties as the Authority Chief Executive or as an executive director, or
 - (iii) the financial interest is terminated prior to the appointment taking effect; or
 - (e) has, under the laws in force in any country-
 - (i) been adjudged or declared bankrupt or insolvent and has not been discharged,
 - (ii) made an assignment to or arrangement or composition with his creditors, which has not been rescinded or set aside,
 - (iii) been declared to be of unsound mind,

- (iv) been convicted of any criminal offence by a court of competent jurisdiction except for traffic offences,
- (v) been disqualified, or
- (vi) suspended from practising his profession by the order of a competent authority.

42. Employees of the Authority

The Board of the Authority shall determine the number of persons that shall be employees of the Authority.

43. Terms and condition of service in the Authority

- (1) The employees of the Authority shall be subject to terms and conditions set out by the board of the Authority.
- (2) The terms and conditions of service referred to in subsection (1) may provide for-
 - (a) the appointment, promotion, dismissal and discipline of employees;
 - (b) appeals by employees against dismissal or other disciplinary measures; and
 - (c) the grant of pensions, gratuities and other retirement benefits to employees.
- (3) In this section, "appointment" includes secondment, transfer and contract appointments.
- (4) Employees of the Authority shall be "public officers" as defined in the Constitution of the Federal Republic of Nigeria, 1999.
- (5) Employment by the Authority shall be subject to the provisions of the Pensions Reform Act and officers and employees of the Authority shall be entitled to pension and other retirement benefits as prescribed under the Pensions Reform Act.
- (6) Nothing in subsection (5) shall prevent the Authority from appointing a person to an office on terms that preclude the grant of pension or other retirement benefits in respect of that office.

44. Remuneration and allowances of the employees of the Authority

The Board of the Authority, in consultation with the National Salaries, Incomes and Wages Commission, shall determine and periodically review the remuneration and allowances payable to the employees of the Authority, having regard to the –

- (a) specialised nature of work to be performed by the Authority;
- (b) need to ensure the financial self-sufficiency of the Authority; and

- (c) remuneration and allowances paid within the petroleum industry to individuals with equivalent responsibilities, expertise and skills.

45. Statement of estimated income and expenditure of the Authority

- (1) The Authority shall, not later than 30th of September of each year or such other date that the Minister responsible for Budget and National Planning may determine, prepare and present to the National Assembly, a statement of estimated income and expenditure of the Authority for the next financial year.
- (2) Notwithstanding the provisions of this section, the Authority may also, in any financial year, submit to the National Assembly supplementary or adjusted statements of estimated income and expenditure of the Authority.
- (3) The financial year of the Authority shall be a period of 12 calendar months commencing on the 1st of January in each year or such other date as the Minister of Finance may determine.

46. Secretary to the Authority

- (1) The Board of the Authority shall appoint a Secretary, who shall –
 - (a) be the Legal Adviser to the Authority;
 - (b) attend meetings of the Board of the Authority and keep minutes, corporate records and the common seal of the Authority; and
 - (c) carry out such administrative and other secretarial duties as the Authority Chief Executive and the Board of the Authority may direct.
- (2) The Secretary shall be a legal practitioner with a minimum of 10 years post- qualification experience.

47. Fund of the Authority

- (1) The Authority shall maintain a Fund (in this Act referred to as "the Authority Fund") into which money accruing to the Commission shall be paid.
- (2) The source of the Authority Fund shall be-
 - (a) money appropriated by the National Assembly for the Authority;
 - (b) fees charged by the Authority for services rendered to licensees, lessees, permit holders and other authorisations issued by the Authority;

- (c) 0.5% of the wholesale price of petroleum products sold in Nigeria, which shall be collected from wholesale customers;
 - (d) income derived from publications made by the Authority and other related activities, including data sales;
 - (e) fees paid to the Authority for using facilities owned or managed by the Authority; and
 - (f) money accruing to the Authority by way of grants, aids, gifts, testamentary dispositions, endowments and contributions.
- (3) The Authority Fund shall be applied-
- (a) to meet the approved budgetary obligations of the Authority;
 - (b) to meet the administrative and operating cost of the Authority;
 - (c) to pay salaries, wages, fees or other remuneration or allowances, pensions and other retirement benefits payable to employees of the Authority;
 - (d) to acquire and maintain any property acquired by or vested in the Authority;
 - (e) for investments, as provided under the Trustee Investments Act or any other applicable legislation, subject to the approval of Minister responsible for Finance; and
 - (f) in connection with any of the functions of the Authority under this Act.
- (4) At the end of each financial year, any money that accrued to the Authority Fund under subsection (2), which have not been utilised for the purposes provided under subsection (3), shall be paid into the Consolidated Revenue Fund.
- (5) The Authority may accept grants of money or property on such terms and conditions as may be specified by the person or organisation making the grant, provided that-
- (a) the terms and conditions of the grant are consistent with the objectives and functions of the Authority; or
 - (b) no such grant is accepted from any person or organisation regulated by the Authority.
- (6) Nothing in subsection (6) shall be construed as authorising the Authority Chief Executive, directors, officer or employee of the Authority to accept any grant for their personal use.
- (7) The Authority shall keep proper accounts of its income and expenditure for each financial year and cause it to be audited within six months after the end of each financial year by auditors

appointed by the Authority from a list and in accordance with guidelines supplied by the Auditor-General for the Federation.

(8) The Authority shall submit to the Minister –

- (a) a mid-year report of its operations and finances not later than the 31st of August of each year;
- (b) an annual report of its operations and performance; and
- (c) an audited financial account for the year, not later than 31st of March of the following year.

(9) The Authority shall, not later than the 31st of March of each year –

- (a) submit to the Minister a summary of its annual report and audited financial accounts; and
- (b) publish the annual report and audited financial accounts on its website.

(10) The provisions of any enactment relating to the taxation of companies or trust funds shall not apply to the Authority.

48. Notice to the Authority

(1) Any Government ministry, department or agency exercising any power or function or taking any action, which may have direct impact on midstream or downstream petroleum operations shall consult with the Authority prior to –

- (a) issuing any regulation, guideline, enforcement order or directive;
- (b) exercising any such power or function; or
- (c) taking any such action.

(2) The Authority shall review the recommendations of the Government ministry, department or agency and communicate decision accordingly and the decision shall be complied with by the relevant Government ministry, department or agency.

49. Special powers of the Authority

(1) The Authority shall in carrying out its functions under this Act have special powers to-

- (a) inquire, inspect, examine or investigate any business or activity relating to midstream or downstream petroleum operations under this Act, where it believes that illegal midstream or downstream petroleum operations are going on;

- (b) conduct surveillance on petroleum liquids and natural gas installations, premises and vessels where it believes that illegal midstream or downstream petroleum operations are going on;
- (c) enter any midstream or downstream wellsite, plant, facility or place-
 - (i) at which petroleum liquids oil or natural gas is refined, processed, stored, handled or treated, or
 - (ii) that is used in connection with any midstream or downstream wellsite, plant, facility or place where petroleum liquids or natural gas are refined, processed, stored, handled or treated;
- (d) enter at any reasonable time premises containing any records or property required to be maintained under this Act or related to the administration of midstream or downstream petroleum operations under this Act for the purpose of inspecting those records or that property;
- (e) require any person or his agent, representative, partner, director, officer or employee engaged in midstream or downstream petroleum operations to –
 - (i) answer any question that may be relevant to the inquiry, inspection, examination or investigation, and
 - (ii) provide any required information contained in a computer hardware or software or any other data storage, processing or retrieval device or system used in connection with the business or activities relating to midstream or downstream petroleum operations under this Act;
- (f) take any sample or carry out any test or examination as it may consider necessary in the performance of its functions;
- (g) use any midstream or downstream machinery, equipment, appliance or thing as it may consider necessary in the performance of its functions;
- (h) remove for examination and copy anything that may be relevant to the inquiry, inspection, examination or investigation, including removing any computer hardware or software or any other data storage, processing or retrieval device or system;
- (i) in conjunction with the Nigeria Police or other law enforcement agencies, arrest with a warrant, any person reasonably believed to have committed an offence under this Act; and
- (j) exercise any other power that may be conferred on it under any law or regulation.

- (2) An entity, person or agent, representative, partner, director, officer or employee of that entity or person under investigation by the Authority shall –
 - (a) grant access to officers of the Authority with regard to any place, wellsite, plant, facility, midstream or downstream machinery, equipment, appliances or things that may be relevant to the investigation; and
 - (b) provide on request, any book, account, record, document, voucher, information and explanation relating to midstream or downstream petroleum operations as the officers of the Authority may require
- (3) An entity, person or agent, representative, partner, director, officer or employee of that entity or person who fails to comply with subsection (2) commits an offence and is liable on conviction to –
 - (a) a minimum fine of ₦ 5,000,000 or a term of imprisonment for five years, and
 - (b) in the case of a continuous offence, to an additional minimum fine of ₦100,000 for each day during which the offence continues
- (4) The Authority shall in the exercise of its powers under this section avoid undue hindrance of entities and persons engaged in lawful midstream or downstream petroleum operations.

50. Special Investigation Unit

The special powers of the Authority under section 49 of this Act shall be performed by the Special Investigation Unit of the Authority or any person authorised by the Authority.

51. Indemnity of the officers of the Authority

- (1) The Authority Chief Executive, a director or any officer of the Authority shall each be indemnified out of the Authority Fund against any liability incurred in defending any proceeding against the Authority or brought against him in his official capacity.
- (2) Notwithstanding the provisions of subsection (1), the Authority shall not indemnify the Authority Chief Executive, a director or any officer of the Authority for any liability incurred as a result of wilful misconduct or gross negligence.

52. The Midstream and Downstream Gas Infrastructure Fund

- (1) There is established the Midstream and Downstream Gas Infrastructure Fund subject to appropriation of the National Assembly, which shall be –
 - (a) a body corporate with perpetual succession and a common seal; and

- (b) reside in the Authority as prescribed in accordance with this Act.
- (2) The Midstream and Downstream Gas Infrastructure Fund shall have the power to acquire, hold and dispose of property, sue and be sued in its corporate name.
- (3) There shall be a Governing Council which shall supervise and make investment decisions for the Fund.
- (4) The Governing Council shall comprise the-
 - (a) Minister, who shall be the Chairman of the Council;
 - (b) representative of the Central Bank of Nigeria not below the rank of a director;
 - (c) representative of the Ministry of Finance not below the rank of a director;
 - (d) Authority Chief Executive;
 - (e) Executive Director Midstream and Downstream Gas Infrastructure Fund;
 - (f) three independent members, who shall be appointed by the President for a term of four years and may be reappointed for another four years and no more; and
 - (g) Legal Adviser of the Authority who shall serve as the Secretary to the Governing Council.
- (5) The Executive Director, Midstream and Downstream Gas Infrastructure Fund shall-
 - (a) have extensive managerial, technical or professional knowledge of the midstream petroleum operations, and fund management or any other relevant industry with a minimum of 15 years' post qualification experience; and
 - (b) be responsible for project management and administration of the Midstream and Downstream Gas Infrastructure Fund.
- (6) The members referred to in subsection (4) (f) shall have extensive managerial, technical or professional knowledge of the midstream petroleum operations, fund management or any other relevant industry with a minimum of 15 years post- qualification cognate experience.
- (7) The source of the Midstream and Downstream Gas Infrastructure Fund shall be –
 - (a) 0.5% of the wholesale price of petroleum products and natural gas sold in Nigeria, which shall be collected from wholesale customers and such levy shall be in addition to the levy provided for under section 47 (2) (c);

- (b) funds and grants accruing from multilateral agencies, bilateral institutions and related sources dedicated partly or wholly for the development of infrastructure for midstream and downstream gas operations in Nigeria;
 - (c) interest, if any, payable in respect of money in the Midstream and Downstream Gas Infrastructure Fund;
 - (d) money received from gas flaring penalties by the Commission under section 104 (4) of this Act, shall be for the purpose of environmental remediation and relief of the host communities of the settlor on which the penalties are levied; and
 - (e) any other sum, freely donated or accruing to the Midstream and Downstream Gas Infrastructure Fund for development of infrastructure in midstream gas operations.
- (8) The Authority shall ensure the prompt payment of all such sums directly into the Midstream and Downstream Gas infrastructure Fund's Account.
- (9) The levy under section 52 (7) (a) of this Act shall become due within 21 days of the sale of petroleum products and natural gas sold in Nigeria, and the Authority shall, after consultation with the Council, make regulations for-
- (a) administration procedures; and
 - (b) penalties for-
 - (i) late payment of the levy,
 - (ii) non-payment of the levy, or
 - (iii) submission of false information in respect of the levy.
- (10) The purpose of the Fund shall be to make equity investments of Government owned participating or shareholder interests in infrastructure related to midstream and downstream gas operations aimed at-
- (a) increasing the domestic consumption of natural gas in Nigeria in projects which are financed in part by private investment;
 - (b) encouraging private investment through risk sharing by participating initially in selected high risk projects and in such other equity investments that encourage investment in midstream and downstream gas infrastructure; and
 - (c) reducing or eliminating gas flare.

- (11) There shall be a Transaction Advisor, who shall be responsible for providing transaction advisory services, including technical and commercial evaluation of proposals, defining project screening criteria and profitability target for projects and any other duty as may be assigned by the Council on behalf of the Fund.
- (12) The Transaction Advisor shall be selected on need basis through a competitive and transparent criteria specified by the Council and the selection process shall be managed by the Executive Director, Midstream and Downstream Gas Infrastructure Fund subject to the approval of the Council.
- (13) The Transaction Advisor shall, in performing his duties under subsection (11), submit report of his findings and recommendations to the Council.
- (14) The Midstream and Downstream Gas Infrastructure Fund shall be managed as follows-
 - (a) the Council shall at the beginning of every financial year, approve the Midstream and Downstream Gas Infrastructure Fund's programme of action with its cost implications and the Accountant General of the Federation shall release the approved amount for that financial year, subject to appropriation by the National Assembly;
 - (b) the money in the Midstream and Downstream Gas Infrastructure Fund's Account that is not utilised as prescribed under this Act shall be held or invested as the Council may direct;
 - (c) an annual statement of the Midstream and Downstream Gas Infrastructure Fund shall be prepared and submitted to the Council and Minister of Finance after three months of the end of the financial year to which they relate;
 - (d) a certified annual audited accounts of the Midstream and Downstream Gas Infrastructure Fund, together with a report on the operations of the Midstream and Downstream Gas Infrastructure Fund, shall be submitted to the Council within six months of the end of the financial year to which they relate; and
 - (e) a certified annual audited accounts of the Midstream and Downstream Gas Infrastructure Fund shall be published annually.
- (15) Earnings, interest and other income accruing from the equity investment made under subsection (10) shall be paid directly to the Midstream and Downstream Gas Infrastructure Fund's Account.
- (16) Interest and other incomes accruing from the equity investment of the Midstream and Downstream Gas Infrastructure Fund can be re-invested in other seemed low risk investments as approved by the Governing Council.

- (17) The members of the Governing Council shall be paid such allowances from the funds of the Midstream and Downstream Gas Infrastructure Fund in accordance with the approved guidelines by the Revenue Mobilization, Allocation and Fiscal Commission.

PART V-THE NIGERIAN NATIONAL PETROLEUM COMPANY LIMITED

53. Nigerian National Petroleum Company Limited

- (1) The Minister shall within six months from the commencement of this Act, cause to be incorporated under the Companies and Allied Matters Act, a limited liability company, which shall be called Nigerian National Petroleum Company Limited (NNPC Limited).
- (2) The Minister shall at the incorporation of NNPC Limited, consult with the Minister of Finance to determine the number and nominal value of the shares to be allotted, which shall form the initial paid up share capital of NNPC Limited and the Government shall subscribe and pay cash for the shares.
- (3) Ownership of all shares in NNPC Limited shall be vested in the Government at incorporation and held by the Ministry of Finance Incorporated, and the Ministry of Petroleum Incorporated in equal portions on behalf at the Federation and the Ministry of Petroleum Incorporated is incorporated under the provisions of the Eighth Schedule to this Act.
- (4) The Ministry of Finance Incorporated and the Ministry of Petroleum Incorporated in consultation with the Government, may increase the equity capital of NNPC Limited.
- (5) Shares held by the Government in NNPC Limited are not transferable including by way of sale, assignment, mortgage, or pledge unless approved by the Government and endorsed by the National Economic Council on behalf of the Federation.
- (6) Notwithstanding any provision to the contrary in the Companies and Allied Matters Act and except by way of security, any sale or transfer of shares of NNPC Limited shall be at a fair market value and subject to an open, transparent and competitive bidding process and the sale or transfer of the shares of NNPC Limited shall be on equal proportion basis of shares held by the Ministry of Finance Incorporated and the Ministry of Petroleum Incorporated.
- (7) NNPC Limited and any of its subsidiaries shall conduct their affairs on a commercial basis in a profitable and efficient manner without recourse to government funds and their memorandum and articles of association shall state these restrictions, and NNPC Limited shall operate as a Companies and Allied Matters Act entity, declare dividends to its shareholders and retain 20% of profits as retained earnings to grow its business.
- (8) Where NNPC Limited has a participating interest or 100% interest in a lease or licence, NNPC Limited shall pay its share of all fees, rents, royalties, profit oil shares, taxes and other required payments to Government as any company in Nigeria.

54. Transfer of assets and liabilities

- (1) The Minister and the Minister of Finance shall within 18 months of the effective date determine the assets, interests and liabilities of NNPC to be transferred to NNPC Limited or its subsidiaries and upon the identification, the Minister shall cause such assets, interests and liabilities to be transferred to NNPC Limited.
- (2) Assets, interests and liabilities of NNPC not transferred to NNPC Limited or its subsidiary under subsection (1), shall remain the assets, interests and liabilities of NNPC until they become extinguished or transferred to the Government and six months following the determination under section 54 (I) of his Act, the Minister, the Minister of Finance and the Attorney General of the Federation shall develop a framework for the payment of the liabilities not transferred to NNPC Limited and if such determination of which assets, interests and liabilities to be transferred has not been concluded within the stipulated period of 18 months, all the assets, interests, liabilities of NNPC is deemed to be transferred to NNPC Limited after 18 months from the effective date.
- (3) NNPC shall cease to exist after its remaining assets, interests and liabilities other than its assets, interests and liabilities transferred to NNPC Limited or its subsidiaries under subsection (1) shall have been extinguished or transferred to the Government.
- (4) Bonds, hypothecations, securities, deeds, contracts, instruments, documents and working arrangements with regards to assets, interests or liabilities transferred to NNPC Limited or any of its subsidiary under subsection (1) and which remains subsisting before the date of transfer shall, beginning from the date of transfer, be effective and enforceable against or in favour of NNPC Limited.
- (5) Any pending action or proceeding brought by or against NNPC before the transfer date with regard to assets, interests or liabilities transferred to NNPC Limited under subsection (1) may be enforced or continued by or against NNPC Limited as the successor of NNPC.
- (6) Notwithstanding the provisions of subsection (5)-
 - (a) an action or proceeding shall not be commenced against NNPC Limited, its subsidiary, director, officer, employee or agent with regard to asset, interest or liability of NNPC Limited, where the time for commencing the action or proceeding would have expired had such asset, interest or liability not been transferred to NNPC Limited or its subsidiaries; and
 - (b) the transfer of asset, interest and liability of NNPC to NNPC Limited under subsection (1) shall not create or be deemed to have created a new cause of action in favour of a –
 - (i) creditor of NNPC, or
 - (ii) party to a contract, agreement or arrangement with NNPC that was entered into before the date of transfer.

- (7) For the purpose of this section and the Second Schedule to this Act, "assets, interests and liabilities" means tangible, intangible, real or personal property, rights and obligations, in each case of all types.
- (8) Subject to any arrangements that NNPC has entered into, any debt to NNPC related to outstanding cash calls under joint venture agreements shall become debt of –
- (a) NNPC Limited where the assets have been transferred to NNPC Limited under subsection (1); and
 - (b) Government where the assets have not been transferred under subsection (2).
- (9) The initial capitalisation of NNPC Limited shall be not less than its financial requirements to effectively discharge its commercial role and deal with its obligations and liabilities transferred to NNPC Limited.

55. Appointment of NNPC Limited as agent of NNPC

- (1) The Minister shall upon incorporation of NNPC Limited, consult with the Minister of Finance to appoint NNPC Limited as agent of NNPC for the purpose of managing the process of winding down the assets, interests and liabilities of NNPC.
- (2) Subject to the appointment under subsection (1), the NNPC Limited shall have the power to deal with the applicable assets, interests and liabilities of NNPC and may enter into contract with third parties on such assets, interests and liabilities.
- (3) Pursuant to the appointment under subsection (1), NNPC shall –
- (a) not deal with the applicable assets, interests and liabilities;
 - (b) at the request of NNPC Limited execute and deliver any document and do such other acts or things as may be required by NNPC Limited with regard to any asset, interest or liability referred to under subsection (1); and
 - (c) pay a nominal fee of US \$1 to NNPC Limited as administrative charges on the applicable assets, interests and liabilities to which NNPC Limited has been appointed under subsection (1).
- (4) The cost of winding down the assets, interests and liabilities of NNPC shall be borne by the Government.
- (5) A cause of action shall not arise in tort, contract or otherwise between NNPC and NNPC Limited in respect of the applicable assets, interests or liabilities to which NNPC Limited has been appointed as agent under subsection (1).

56. Subsistence of guarantee

Subject to section 92 (3) (a) of this Act, any guarantee granted or issued by the Government with regard to the transfer of liability of NNPC to NNPC Limited under section 54 of this Act shall be enforceable against the Government as if such liability was a liability of NNPC, provided that such guarantee was effective prior to such transfer.

57. Transfer of employees and conditions of service

- (1) Upon incorporation of NNPC Limited under section 53 of this Act, employees of NNPC and its subsidiaries shall be deemed to be employees of NNPC Limited on terms and conditions not less favourable than that enjoyed prior to the transfer of service and shall be deemed to be service for employment related entitlements as specified under any applicable law.
- (2) NNPC Limited shall continue to fulfil the statutory obligations of NNPC in relation to the pension scheme of employees of NNPC and its subsidiaries prior to the date of incorporation of NNPC Limited.

58. The Board of NNPC Limited

There shall be a Board of the NNPC Limited which shall perform its duties in accordance with this Act, the Companies and Allied Matters Act and the articles of association of NNPC Limited.

59. Composition of the Board of NNPC Limited

- (1) Except as set out in this section, the composition of the Board of the NNPC Limited shall be determined in accordance with the Companies and Allied Matters Act and its Articles of Association.
- (2) The Board of NNPC Limited shall be appointed by the President and composed of –
 - (a) a non-executive chairman;
 - (b) the Chief Executive of NNPC Limited;
 - (c) the Chief Financial Officer of NNPC Limited;
 - (d) a representative of the Ministry of Petroleum, not below the rank of a director;
 - (e) a representative of the Ministry of Finance, not below the rank of a director; and

- (f) six non-executive members with at least 15 years post- qualification cognate experience in petroleum or any other relevant sector of the economy one from each geopolitical zone.
- (3) A person to be appointed as the Chief Executive of NNPC Limited shall have extensive managerial, technical and professional knowledge in the petroleum or other relevant industry with at least 15 years' post-qualification experience.
- (4) In the absence of the Chairman, the members of the Board of NNPC Limited may appoint a non-executive member of the Board to act as alternate Chairman.
- (5) The provisions of this section shall apply where NNPC Limited remains wholly- owned by the Government and where NNPC Limited is not wholly owned by Government, the composition of the Board of NNPC Limited shall be determined by the shareholders of NNPC Limited in accordance with the provisions of the Companies and Allied Matters Act and the articles of association of NNPC Limited.

60. Committees of the Board of NNPC Limited

- (1) The Board of NNPC Limited shall, within three months of the incorporation of NNPC Limited, develop formal and transparent process for the creation of its committees and nomination of members of the Board of NNPC Limited to the committees.
- (2) The mandate, composition and procedures of each committee of the Board of NNPC Limited shall be comprehensive and open for inspection by the shareholders of NNPC Limited.
- (3) The Board of NNPC Limited shall nominate non-executive members of the Board capable of exercising independent judgment to its committees where there is likelihood of conflict of interest.
- (4) The Board of NNPC Limited shall have committees for -
 - (a) ensuring the integrity of financial and non-financial reporting;
 - (b) the nomination of Board of NNPC Limited members and key executives;
 - (c) remuneration of members of the Board of NNPC Limited; and
 - (d) any other committee as the Board of NNPC Limited may consider appropriate

61. Application of principle of corporate governance

- (1) Members of the Board of NNPC Limited shall discharge their responsibilities in accordance with the highest standards, practices and principles of corporate governance.

- (2) The Board of NNPC Limited shall, upon request by one or more of shareholders holding not less than 10% of the voting interests in NNPC Limited, provide a comprehensive written explanation of any action or decision taken by the Board of NNPC Limited to its shareholders, provided that the Board of NNPC Limited may withhold the explanation if permitted under a duty of confidentiality NNPC Limited owed to any third party.

62. Annual audit of NNPC Limited

- (1) NNPC Limited shall ensure that an annual audit of NNPC Limited is conducted by an independent, competent, experienced and qualified auditor.
- (2) The auditor of NNPC Limited shall provide an external and objective assurance to the Board of NNPC Limited and shareholders of NNPC Limited that the financial statements of NNPC Limited fairly represent the financial position and performance of NNPC Limited.
- (3) Where the auditor of NNPC Limited is unable to provide the assurance required under subsection (2), the Board of NNPC Limited shall immediately convene an extraordinary general meeting of the company to-
 - (a) notify the shareholders of NNPC Limited; and
 - (b) consider any action that may be necessary in that regard.

63. Responsibilities of the Board of NNPC Limited

- (1) The Board of NNPC Limited shall, in addition to its responsibilities under the Companies and Allied Matters Act and its articles of association—
 - (a) be responsible for the strategic guidance and determining the business structure of NNPC Limited;
 - (b) be responsible for the approval of the annual budget of NNPC Limited;
 - (c) act in good faith and exercise due diligence and care in the best interests of NNPC Limited, the shareholders and the sustainable development of Nigeria;
 - (d) apply the highest ethical standards in performing its duties, taking into account the interests of its stakeholders and the fiduciary duty of the directors to NNPC Limited;
 - (e) make decisions guided by commercial and technical considerations that represents good international petroleum industry practices;
 - (f) determine and report to the shareholders of NNPC Limited on key performance indicators on at least annual basis;

- (g) review and guide corporate strategy, major plan of action, risk policy and business plan;
 - (h) set performance objectives for NNPC Limited, the Board of NNPC Limited, members of NNPC Limited's management and individual business units and subsidiaries of NNPC Limited;
 - (i) monitor NNPC Limited's corporate performance
 - (j) oversee major capital expenditures, acquisitions and divestitures;
 - (k) monitor the effectiveness of NNPC Limited's governance practices and propose and implement changes;
 - (l) select, compensate, monitor and replace management executives and oversee succession plan;
 - (m) align key executive and Board of NNPC Limited remuneration with the longer term interests of NNPC Limited, its shareholders and stakeholders;
 - (n) monitor and address potential conflicts of interest of management and members of the Board of NNPC Limited and breach of fiduciary duty by members of the Board of NNPC Limited;
 - (o) ensure the integrity of NNPC Limited's accounting and financial reporting systems, including audit of NNPC Limited's accounts by independent third party;
 - (p) ensure that appropriate system of control is in place for risk management, financial and operational control and compliance with applicable law and relevant standards;
 - (q) oversee the process of disclosure and communications to shareholders and the public; and
 - (r) determine the dividend policy of NNPC Limited, ensure sustained growth and a sound financial base for NNPC Limited.
- (2) The provisions of this section shall be incorporated into the memorandum and articles of association of-
- (a) NNPC Limited at the time of its incorporation; and
 - (b) each of the NNPC Limited's wholly-owned subsidiaries as if references in this section to 'NNPC Limited' were references to such wholly-owned subsidiary.

- (3) A member of the Board of the NNPC Limited shall be suspended or removed from office by the President, where the member-
- (a) is found to be-
 - (i) unqualified for appointment under section 59 of this Act,
 - (ii) unqualified subsequent to his appointment, or
 - (iii) in breach of conflict of interest provisions in the Companies and Allied Matters Act or any regulation regarding conflicts of interest passed under this Act;
 - (b) ceases to be an employee of the ministry or agency he represents on the Board of the NNPC Limited
 - (c) has demonstrated an inability to effectively perform the duties of his office;
 - (d) has been absent from the meeting of the Board of the NNPC Limited for three consecutive times without the consent of the Chairman or in the case of the Chairman, without the consent of the President, except where good reason is shown for the absence;
 - (e) is found guilty of serious misconduct by a court or tribunal of competent jurisdiction; or
 - (f) has, under the law in force in any country-
 - (i) been adjudged or declared bankrupt or insolvent and has not been discharged,
 - (ii) made an assignment to or arrangement or composition with his creditors which has not been rescinded or set aside, or
 - (iii) incapable to discharge the duties of his office as a result of infirmity of body or mind.

64. Objectives of NNPC Limited

The objectives of NNPC Limited shall include to-

- (a) carry out petroleum operations on a commercial basis, comparable to private companies in Nigeria carrying out similar activities including exemption to Public Procurement Act, Fiscal Responsibility Act and Treasury Single Account.
- (b) NNPC Limited to be vested as the concessionaire of all Production Sharing Contracts (PSC), Profit Sharing and Risk Service Contracts as the National oil company on behalf of the Federation in line with its competencies;

- (c) lift and sell royalty oil and tax oil on behalf of the Commission and the Service respectively for an agreed commercial fee and in the case of profit oil and profit gas payable to the concessionaire, NNPC Limited shall promptly remit the proceeds of the sales of the profit oil and profit gas to the Federation less its 30% for management fee and Frontier Exploration Fund as specified in section 9 (4) of this Act;
- (d) carry out test marketing to ascertain the value of crude oil and report to the Commission;
- (e) be vested with the rights to natural gas under production sharing contracts entered into prior to and after the effective date of this Act;
- (f) carry out the management of production sharing contracts for a fee, based on the profit oil share or profit gas share in accordance with paragraph (c);
- (g) with respect to any joint operating agreement in which NNPC is a party on the effective date assume the working interest held by NNPC irrespective of whether such licence or lease is converted under section 92 of this Act;
- (h) engage in the business of renewables and other energy investments;
- (i) promote the domestic use of natural gas through development and operation of large-scale gas utilisation industries;
- (j) maintain the role of NNPC, under section 54 of this Act;
- (k) carry out task requested by the Commission or Authority on a fee basis and generally engage in activities that ensure national energy security in an efficient manner, in the overall interest of the Federation;
- (l) carry out such other tasks as may be determined by the Board of NNPC Limited; and
- (m) make NNPC Limited supplier of last resort for security reasons and all associated costs shall be for the account of the Federation.

65. Establishment of incorporated joint venture companies

- (1) NNPC Limited and other parties to joint operating agreements in respect of upstream petroleum operations, may on a voluntary basis restructure their joint operating agreement as a joint venture carried out by way of a limited liability company, each referred to as an “incorporated joint venture company” (IJVC), based on the principles established in the Second Schedule to this Act.
- (2) The IJVC referred to in subsection (1) shall not be subject to the provisions of the Fiscal Responsibility Act and the Public Procurement Act.

- (3) The proposed IJVC structure shall be an independent entity, having a strong commercial orientation and transparent company operation for the IJVC shareholders, with clear rules for accountability.

CHAPTER 2—ADMINISTRATION

PART I—GENERAL ADMINISTRATION

66. Objectives

(1) The objectives of Chapter 2 are to-

- (a) promote the exploration and exploitation of petroleum resources in Nigeria for the benefit of the Nigerian people;
- (b) promote the efficient, effective and sustainable development of the petroleum industry;
- (c) promote the safe and efficient operation of the transportation and distribution infrastructure for the petroleum industry;
- (d) provide the framework for developing third party access arrangements to petroleum infrastructure;
- (e) encourage and facilitate both local and foreign investment in the petroleum industry;
- (f) promote transparency and accountability in the administration of petroleum resources in Nigeria;
- (g) develop, where appropriate, competitive markets for the sale and distribution of petroleum and petroleum products;
- (h) promote safe and affordable access to petroleum and petroleum products in Nigeria;
- (i) promote the processing of petroleum within Nigeria and the development of fuel and chemical industry and other related value-added products and activities;
- (j) create a conducive business environment for operations in the petroleum industry;
- (k) promote the liberalisation of the downstream petroleum industry;
- (l) establish an orderly, fair and competitive commercial environment within the petroleum industry; and
- (m) ensure that petroleum operations are conducted in a manner that protects the health and safety of persons, property and the environment.

(2) The provisions of Chapter 2 of this Act shall apply to-

- (a) activities within or associated with petroleum operations and the petroleum industry; and
- (b) persons conducting such activities.

67. Management of petroleum resource

The administration and management of petroleum resources and their derivatives shall be conducted in accordance with this Act and the principles of good governance, transparency and sustainable development of Nigeria.

PART II—ADMINISTRATION OF UPSTREAM PETROLEUM OPERATIONS AND ENVIRONMENT

68. Administrative of acreage and vesting of data

- (1) Title to any data and its interpretation relating to upstream petroleum operations are vested in the Government of the Federation of Nigeria and shall be administered by the Commission.
- (2) The Commission shall administer any acreage for upstream petroleum operations in Nigeria.
- (3) Where a significant petroleum discovery is made in a frontier basin, the Minister may, on the recommendation of the Commission, reclassify all or part of the basin from frontier acreages to a general onshore area and the fiscal terms applicable to onshore under this Act shall apply to-
 - (a) new licences and leases in the basin after reclassification; and
 - (b) any existing lease upon renewal, provided that it shall not be applied to licences and leases existing at the moment of reclassification.

69. National grid system

- (1) The Commission shall, after consultation with the Surveyor General of the Federation, adopt a national grid system for acreage management.
- (2) The grid system referred to under subsection (1) shall be based on the UTM system or any other projection system in use by the office of the Surveyor-General of the Federation.
- (3) The Commission shall establish a system for numbering of parcels, which shall allow for subdivision and aggregation of the parcels.
- (4) The basic unit of the grid system shall be a parcel of one square kilometer, subject to adjustment of the zones and national boundary.

- (5) The Commission may further subdivide parcels into equal units of one hectare or such sub-units as the Commission may deem appropriate.
- (6) The national grid system referred to under subsection (1) shall be used for the administration of upstream petroleum operations, including-
 - (a) the definition of licence and lease areas;
 - (b) relinquishments;
 - (c) bid procedures;
 - (d) identification of well locations;
 - (e) petroleum conservation measures; and
 - (f) other regulatory and acreage management procedures.
- (7) Any current boundary of a licence or lease, which does not conform to the new national grid system shall remain unaltered and be apportioned in parcels.

70. Licences and leases

- (1) There shall be the following licences and leases under this Act related to upstream petroleum operations-
 - (a) petroleum exploration licence, which may be granted to qualified applicants to carry out petroleum exploration operations on a non-exclusive basis;
 - (b) petroleum prospecting licence, which may be granted to qualified applicants to-
 - (i) drill exploration and appraisal wells and do corresponding test production on an exclusive basis, and
 - (ii) carry out petroleum exploration operations on a non-exclusive basis; and
 - (c) petroleum mining lease, which may be granted to qualified applicants to-
 - (i) win, work, carry away and dispose of crude oil, condensates and natural gas on an exclusive basis,
 - (ii) drill exploration and appraisal wells and carry out the related test production on an exclusive basis, and

- (iii) carry out petroleum exploration operations on a non-exclusive basis.
- (2) A licence or lease may be granted under this Act only to a company incorporated and validly existing in Nigeria under the Companies and Allied Matters Act.

71. Petroleum exploration licence

- (1) The Commission shall be responsible for granting of petroleum exploration licences.
- (2) The holder of a petroleum exploration licence shall have non-exclusive right to carry out petroleum exploration operations within the area provided for in the licence.
- (3) A petroleum exploration licence shall be for three years and may be renewable for additional period of three years subject to fulfilment of prescribed conditions, but shall not include any right to win, extract, work, store, carry away, transport, export or otherwise treat petroleum discovered in or under the licence area.
- (4) A petroleum exploration licence may cover an area that includes petroleum prospecting licences or petroleum mining leases, provided that then holders of such licences or leases, shall have no obligation to purchase the results of any survey conducted under the petroleum exploration licence.
- (5) A petroleum exploration licence granted in respect of frontier acreages may include a provision permitting the licensee to select, based on the result of his exploration work and be granted one or more petroleum prospecting licences prior to the termination of the licence containing the fiscal provisions stipulated in Chapter 4 of this Act.
- (6) The Commission shall have sole right and title over any acquired raw and interpreted data obtained by a licensee pursuant to a petroleum exploration licence, provided that the licensee shall be entitled to grant a data use licence to a third party subject to a written authorisation by the Commission, which shall not be unreasonably withheld.
- (7) A licensee is entitled to a fee from a third party for data use licence granted under subsection (6) and shall remit to the Commission any agreed portion of the fee due to the Commission.
- (8) Exploration activities conducted pursuant to a petroleum exploration licence shall be monitored and administered by the Commission in accordance with regulations made under this Act.
- (9) The Commission shall have sole right and title over all acquired and interpreted data from existing speculative survey agreements entered into with the Department of Petroleum Resources on behalf of the Government prior to the effective date.
- (10) The carrying out of geological, geophysical or geochemical surveys for scientific or educational purposes in relation to petroleum do not require a petroleum exploration licence, where the results of such surveys are not for sale or commercial gain.

72. Petroleum prospecting licence

- (1) The holder of a petroleum prospecting licence shall, subject to the fulfilment of obligations imposed by this Act, have-
 - (a) exclusive right to drill exploration and appraisal wells and non-exclusive right to carry out petroleum exploration operations within the area provided for in the licence; and
 - (b) right to carry away and dispose of crude oil or natural gas won or extracted during the drilling of exploration or appraisal wells as a result of production tests, subject to the fulfilment of obligations imposed by this Act.
- (2) A holder of the petroleum prospecting licence shall not be granted an extension except as prescribed under sections 78 (4), (9) and 79 (6) of this Act.
- (3) Where a holder of a petroleum prospecting licence fails to fulfil any term or condition of the licence, it shall not, except as provided in the licence, give the Minister a right of claim against the licensee or be deemed a breach of the licence, if the failure arises from force majeure.
- (4) Where there is any delay by a licensee in the fulfilment of any term or condition of a petroleum prospecting licence caused by force majeure, the period of such force majeure shall be added to the period fixed for the fulfilment of the applicable term or condition, provided that such period shall not exceed three years in total after which, the licence may be terminated by the Commission or the licensee.
- (5) The Minister may grant a petroleum prospecting licence to a qualified applicant recommended by the Commission and shall not grant such licence to any other person and where the Minister does not grant the licence, the Minister shall inform the Commission in writing for the rationale of the decision.
- (6) Notwithstanding the provisions of this section, a petroleum prospecting licence may also be granted under section 93 of this Act.

73. Bidding process

- (1) Subject to the provisions of sections 71 (5), 74 (3), 81 (1) and 93 (2) of this Act, petroleum prospecting licence or petroleum mining lease shall only be granted-
 - (a) based on a fair, transparent and competitive bidding process; and
 - (b) in compliance with the provisions of this Act, regulations made under this Act and licensing round guidelines issued by the Commission for each licensing round.
- (2) The Commission may periodically publish a licensing round plan.

- (3) Subject to section 71 (5) and other provisions of this Act, the Minister may, on the recommendation of the Commission, grant a petroleum prospecting licence or petroleum mining lease to a winning bidder in accordance with section 74 of this Act, provided that the winning bidder has complied with the requirements of the bid invitation.
- (4) The Minister shall inform the Commission of his decision within 90 days of the application for licence or lease and where he fails to inform the Commission within the stipulated time, the licence or lease shall be deemed granted.

74. Award process

- (1) The grant of a petroleum prospecting licence or a petroleum mining lease on a previously appraised area of a petroleum prospecting licence or a surrendered, relinquished or revoked petroleum mining lease in, under or upon the territory of Nigeria, shall be by an open, transparent, competitive and non-discriminatory bidding process conducted by the Commission under section 73 (1) of this Act.
- (2) The winning bidder shall be determined on the basis of the following bid parameters-
 - (a) a single bid parameter, which shall be based on any one of the following parameters-
 - (i) a signature bonus to be paid in full prior to the granting of the licence or lease by or on behalf of the winning bidder,
 - (ii) a royalty interest,
 - (iii) a profit split or profit oil split,
 - (iv) a work programme commitment during the initial exploration period, or
 - (v) any other parameter as may be defined specific to a bid round; and
 - (b) a combination of the bid parameters specified in paragraph (a) of this subsection, based on a points system assessable by the bidder in such a manner that the bidder with the highest aggregate number of points shall be the winning bidder.
- (3) Notwithstanding the bidding parameters prescribed in subsection (2), where there is a bilateral or multi-lateral agreement between Nigeria and another country, the Government may, for strategic purpose and in return for substantive benefits to the nation, direct the Commission to negotiate and award a petroleum prospecting licence or petroleum mining lease to a qualified investor identified in the agreement or treaty.
- (4) A signature bonus payable in respect of any licence or lease awarded under subsection (3) shall be based on a transparent method for evaluating the acreage.

- (5) The Commission shall call for bids in accordance with a procedure published on its website and in at least two international financial newspapers and two national newspapers with wide coverage.
- (6) Where the Commission calls for bids pursuant to this section, it shall prescribe in a regulation or guideline the minimum pre-qualification criteria of prospective bidders in terms of technical and financial requirements and previous experience.
- (7) The bids received based on the bid parameters prescribed in subsection (2) through an open, transparent and competitive bidding process, shall include an electronic bidding process, open to public and conducted in the presence of representatives of the Nigerian Extractive Industry Transparency Initiative, the Federal Ministry of Finance and the Federal Ministry of Petroleum Resources.

75. Licensing round guidelines

The licensing round guidelines shall be accompanied with the model licence for the petroleum prospecting licence or model lease for the petroleum mining lease for the bid round and shall include the-

- (a) licence or lease acreages, the term and minimum work obligations;
- (b) requirements to be fulfilled by the bidders and the pre-qualification criteria, as the case may be;
- (c) bid parameter;
- (d) list of documents required and criteria for the evaluation of technical capacity, financial competence and legal status of interested parties; and
- (e) details and cost for the acquisition of relevant data and studies.

76. Model licence and model lease

The model licence or model lease for each bid round shall reflect the conditions of the licensing round guidelines for the bid round and shall in all circumstances include the following clauses-

- (a) description of the acreage;
- (b) term of the licence or lease;
- (c) minimum work programme and minimum level of investment;
- (d) details of guarantees to be provided by the licensee or lessee regarding the performance of its licence or lease obligations;
- (e) details of obligations regarding relinquishment, decommissioning and abandonment;

- (f) rules for the resolution of disputes including arbitration, mediation, conciliation or expert determination;
- (g) applicable sanctions in the event of failure by the licensee or lessee to comply with the terms and conditions of the licence or lease; and
- (h) such other clauses as the Commission may deem necessary.

77. Duration and area of petroleum prospecting licence

- (1) A petroleum prospecting licence for onshore and shallow water acreages shall be for a duration of not more than six years, comprising of an initial exploration period of three years and an optional extension period of three years.
- (2) A petroleum prospecting licence for deep offshore and frontier acreages shall be for a duration of not more than 10 years, comprising of an initial exploration period of five years and an optional extension period of five years.
- (3) The area provided for in a petroleum prospecting licence shall not exceed-
 - (a) 350 square kilometres for any onshore or shallow water acreages;
 - (b) 1,000 square kilometres for any deep offshore acreages; and
 - (c) 1, 500 square kilometres for any frontier acreages

78. Work commitment, commercial discovery and significant gas discovery

- (1) A petroleum prospecting licence shall contain a requirement that the licensee commit to a work programme and such other terms and conditions as the Commission shall determine.
- (2) A licensee shall, during the initial exploration period and the optional extension period provided for in a petroleum prospecting licence, commit to drill at least one exploration well to a minimum depth specified in the licence for each period, except for frontier acreages, where the work program during the initial exploration period may only consist of geophysical work.
- (3) Where a licensee makes a discovery during the initial exploration period or the optional extension period provided for in the applicable petroleum prospecting licence, the licensee shall inform the Commission within 180 days of the discovery if he considers that the discovery merits appraisal or is of no interest to him.
- (4) Where a licensee considers that a discovery merits appraisal, the licensee shall submit to the Commission within one year for approval-

- (a) a commitment to an appraisal programme of not more than three years with a scope and nature permitting the licensee to declare a commercial discovery, where the result of the appraisal is positive; and
 - (b) the appraisal area, not larger than the outer boundary of the discovery, as determined by the licensee and a zone of not more than two kilometres surrounding the outer boundary, provided that the appraisal area does not extend beyond the area provided for in the applicable petroleum prospecting licence.
- (5) The Commission shall act on the approval request for the appraisal programme within 60 days after its submission and a licensee shall, upon the approval of the appraisal programme and appraisal area by the Commission, promptly carry out the committed appraisal programme.
- (6) Where the Commission fails to act on the appraisal programme referred to under subsection (5) within 60 days, the appraisal shall be deemed approved.
- (7) The provision of section 88 (3) of this Act shall apply to any appraisal area under subsections (5) and (6).
- (8) The licensee shall, upon the completion of the appraisal program-
 - (a) declare a commercial discovery;
 - (b) declare a significant gas discovery or a significant crude oil discovery; or
 - (c) inform the Commission that the discovery is of no interest to the licensee.
- (9) Where a significant gas discovery or significant crude oil discovery has been declared, the licensee shall be entitled to retain the area of such significant gas discovery or significant crude oil discovery for a retention period as may be determined by the Commission, which shall not be more than 10 years from the day the declaration was made and with the approval of the Commission a licensee is entitled to drill further appraisal wells.
- (10) The retention area of a significant gas discovery or significant crude oil discovery shall continue to subsist pursuant to a petroleum prospecting licence until the expiration of the period under subsection (9) or declaration of a commercial discovery by the licensee.
- (11) The Commission shall approve an area of a significant gas discovery or significant crude oil discovery which shall not be larger than the outer boundary of the discovery declared by the licensee, including a zone of not more than two kilometres surrounding the outer boundary, provided that such area shall not extend beyond the area described in the applicable petroleum prospecting licence.
- (12) The provision of section 88 (3) of this Act shall apply to any retention area.

- (13) Where, upon the expiry of the retention period determined under subsection (9), the licensee has not declared a commercial discovery, the area declared under subsection (9) shall be immediately relinquished by the licensee.
- (14) Upon the relinquishment of the retention area with the latest expiry date referred to in subsection (13), the applicable petroleum prospecting licence shall expire.
- (15) Where a licensee declares a discovery of no interest under subsection (3) or (8), the Commission may require the relinquishment of the parcels that cover the structure of such discovery.
- (16) A commitment by a licensee under this section shall be supported by a bank guarantee, letter of credit or performance bond issued by a bank acceptable to the Commission for an amount determined by the Commission.
- (17) The licensee shall in each calendar year present an annual work program and status report as prescribed by regulations for approval by the Commission and such program shall as a minimum, contain the committed work.

79. Commercial discovery and field development plan

- (1) Where a licensee under a petroleum prospecting licence declares a commercial discovery under section 78 (8) (a) of this Act, the licensee shall within two years of the declaration, submit to the Commission a field development plan with regard to the commercial discovery together with a commitment to carry out the work described in the field development plan.
- (2) The Commission shall evaluate the technical and commercial terms of the field development plan and shall only approve the field development plan where-
 - (a) it meets the technical standards required for petroleum operations based on good international petroleum industry practices;
 - (b) the location of the measurement point, measurement processes and equipment are acceptable to the Commission;
 - (c) it results in the maximum economic recovery of crude oil, natural gas and condensates from the applicable reservoirs;
 - (d) it meets the health, safety and environmental standards, as determine by the Commission;
 - (e) it provides for the efficient and commercial use of facilities for midstream petroleum operations;
 - (f) it does not involve excessive capital or operating expenditures;
 - (g) it includes an approved Nigerian content plan pursuant to the Nigerian Oil and Gas Industry Content Development Act;

- (h) it includes an environmental management plan in a form that complies with section 102 of this Act;
 - (i) it includes a decommissioning and abandonment plan and decommissioning and abandonment fund that complies with sections 232 and 233 of this Act;
 - (j) it provides for the elimination of routine natural gas flaring;
 - (k) it does not relate to upstream petroleum operations that are in conflict with domestic gas delivery obligation;
 - (l) it includes-
 - (i) a detailed programme for the recruitment and training of Nigerians in all phases of petroleum operations handled directly by the licensee or through agents and contractors of the licensee, and
 - (ii) provision for scholarship schemes, internships, continuous professional development and other training requirements;
 - (m) it complies with the obligations to host communities under Chapter 3 of this Act; and
 - (n) it includes a development period sufficient to construct any required infrastructure and the development of the field.
- (3) Where the development of a commercial discovery requires construction of facilities for midstream petroleum operations in a manner integrated with the upstream petroleum operations, a licensee may submit the development plan as a single integrated project, which may be reviewed by the Commission.
 - (4) Where a single integrated project is submitted, the Commission shall review and implement the project based on its regulatory responsibilities.
 - (5) Where a licensee does not submit a field development plan and work commitment within the period set forth in subsection (1), the area containing the commercial discovery shall be relinquished.
 - (6) Where the licensee has submitted a field development plan for the field, the licence shall continue until the process for the grant of a lease has been completed or the Commission has decided not to grant the lease.
 - (7) Where the licensee establishes and secures approval for an appraisal area or declares a commercial discovery, a petroleum prospecting licence shall, where required, be extended until the-

- (a) grant of the petroleum mining lease; or
 - (b) decline of the approval for the appraisal area or commercial discovery.
- (8) Notwithstanding the provisions of section 78 (10) of this Act, the holder of the retention area shall within two years after declaring a commercial discovery, submit to the Commission a field development plan that complies with the requirements in subsection (2).
- (9) The Commission shall give its final decision to approve or disapprove a field development plan within 180 days after the submission of the field development plan in compliance with the requirements in subsection (2) and a lease shall be granted upon the approval of the field development plan.
- (10) Where the Commission fails to respond to the field development plan within 180 days, the plan shall be deemed approved.
- (11) A commitment by a licensee under this section shall be supported by a bank guarantee, letter of credit or performance bond issued by a bank acceptable to the Commission for an amount determined by the Commission.
- (12) Upon approval of a field development plan, no material modification shall be made except in accordance with the approval provisions set out in subsection (2) and the submission and approval of an amended field development plan.
- (13) Upon the granting of one or more petroleum mining leases, the annual work program and status report referred to under section 78 (17) of his Act shall include the program and report for each lease.
- (14) A field development plan may be submitted in phases, with the detailed provisions under subsection (2) relating to the first phase and the possible subsequent phases described on a high level basis, with approval being sought only for the first phase and amended field development plan needs to be presented for each following phase where the lessee is willing to commit to such following phase.

80. Utilisation

- (1) A licensee or lessee shall promptly notify the Commission of any petroleum reservoir which extends beyond the boundaries of its licence or lease area.
- (2) The Commission may, for the purpose of ensuring optimum recovery of petroleum from a petroleum reservoir, require all petroleum operations relating to commercial discovery to be carried out by a licensee or lessee on the basis of a unitised development of the applicable commercial discovery, where-

- (a) the petroleum reservoir covered by an area to which a licence or lease relates extends beyond the boundaries of such area into an area to which another licence or lease relates and in respect of which a different person is the licensee or lessee; and
 - (b) at least one licensee or lessee has made a declaration of a commercial discovery.
- (3) The Commission may, upon receipt of a notification under subsection (1) direct the applicable licensee or lessee to enter into a unit agreement to develop the petroleum reservoir as a unit, within a period of time to be determined by the Commission, which shall not be less than two years.
- (4) The unit agreement referred to in subsection (3) shall be approved by the Commission and shall-
 - (a) be based on terms agreed by the parties and in a form that conforms with good international petroleum industry practices; and
 - (b) contain terms and conditions as may be required by a regulation issued by the Commission under subsection (9).
- (5) A unit agreement shall, in addition to the requirements of subsections (3) and (4)-
 - (a) be based on reliable technical, operational and economic considerations;
 - (b) set out the proposed operator of the applicable unit; and
 - (c) set out technical information regarding the petroleum reservoir subject to unitisation, including structure mapping, net pay and such other engineering and geophysical information as may be required by a regulation issued by the Commission under subsection (9).
- (6) Where the applicable licensees or lessees are unable to reach agreement within the time limit imposed by the Commission under subsection (3), the Commission may, in compliance with subsections (4) and (5), require the licensees or lessees to jointly appoint a consultant to develop terms and conditions that are fair and equitable to licensees or lessees and Government and which shall be binding on the licensees or lessees after approval by the Commission and where the applicable licensees or lessees fail to appoint a consultant within two months after the requirement by the Commission, the Commission shall appoint the respective consultant and the remuneration of the Consultant shall be paid by the licensees or lessees.
- (7) Where a petroleum reservoir extends beyond the boundaries of the licence or lease into an adjacent area which is not covered by a licence or lease, the Commission may-
 - (a) extend the boundaries of the licence or lease to include the entire petroleum reservoir within such licence or lease, provided that the licensee or lessee submits to the

Commission a field development plan that includes the additional adjacent area acceptable to the Commission; or

- (b) conduct a bid round for the adjacent area in accordance with the licensing round guidelines and the provisions of this Act.
- (8) Where a petroleum reservoir unitised under this section is able to continue in production after the expiration of one or more licences or leases relating to the petroleum reservoir, the Commission may grant an extension of the licences and leases in the unitised field.
- (9) The Commission may from time to time issue regulations in relation to unitisation.

81. Petroleum mining lease

- (1) A petroleum mining lease shall be granted for each commercial discovery of crude oil or natural gas or both, to the licensee of a petroleum prospecting licence who has-
 - (a) satisfied the conditions imposed on the licence or the licensee under this act; and
 - (b) received approval for the applicable field development plan from the Commission.
- (2) A petroleum mining lease shall be granted under sections 70 (2) and 74 of this Act, where a prospective lease area contains petroleum field with suspended wells or continuing commercial production, where the corresponding petroleum mining lease has been revoked or has expired.
- (3) A petroleum mining lease granted under subsection (2) may include an appraisal phase and the development and production of the field may include a work program requirement to enhance ongoing production.
- (4) A licensee shall subject to subsection (7), propose that a separate petroleum mining lease be granted for each commercial discovery to which a petroleum prospecting licence relates prior to the expiration of the applicable petroleum prospecting licence.
- (5) Notwithstanding any grant of a petroleum mining lease under subsection (4), the applicable petroleum prospecting licence shall continue for the remaining area to which that licence relates for the duration provided for in that licence.
- (6) The area to which a petroleum mining lease relates and derived from a petroleum prospecting licence shall be proposed by the licensee, based on an independent engineering report, which shall not be binding on the Commission.
- (7) The Commission shall approve the proposed area, which shall contain every parcel within the outer boundary of the field based on oil-water contacts, spill point, intersection of planned development wells with the reservoirs or other reservoir limits, including a zone surrounding the boundary consisting of all parcels that are in whole or in part within one kilometre of such outer boundary, provided that such area shall not contain parcels-

- (a) outside the original licence area from which the lease is derived;
 - (b) in areas relinquished by the licensee; or
 - (c) in an existing petroleum mining lease.
- (8) The Commission may approve modification of an area of a petroleum mining lease to include further parcels as are appropriate, based on the criteria prescribed under subsections (6) and (7), where during the period provided for in a petroleum prospecting licence, the outer boundary of the commercial discovery changes due to further-
- (a) drilling or other exploration activities; or
 - (b) petroleum discoveries in deeper or shallower formations.
- (9) Where two or more petroleum mining leases derived from the same petroleum prospecting licence constitute a single field based on an interpretation by the Commission of geological or petroleum engineering data showing that the field is a single field, the leases shall be considered as a single lease, notwithstanding that their boundaries do not join with another lease, provided the granting date of the single lease shall be the date of the first lease that was granted.
- (10) A petroleum mining lease shall not consist of an area that is less than one parcel or where a parcel has been subdivided under section 69 (5) of this Act, less than one subdivision of such parcel.
- (11) Notwithstanding the provisions of this section, a petroleum mining lease may also be granted under sections 74 (3) and 93 of this Act.
- (12) Where a lessee makes a separate commercial discovery underneath the area of a petroleum mining lease in shallower or deeper formations, the lessee may present a development plan for such discovery and upon approval of such plan the lessee shall be granted a separate lease for such commercial discovery.

82. Exclusive right to conduct operations

- (1) A lessee under a petroleum mining lease shall have the exclusive right to carry out the development and production of the petroleum with respect to the formations under the lease area as defined in the lease.
- (2) A lessee under a petroleum mining lease shall have the exclusive right to drill exploration and appraisal wells in the lease area and the non-exclusive right to carry out petroleum exploration operations.
- (3) A petroleum mining lease for conducting upstream petroleum operations shall only be granted on the basis of a commitment from the applicable lessee to-

- (a) develop and produce the commercial discovery of crude oil or natural gas in the area to which the lease relates in accordance with the applicable field development plan; or
 - (b) restart or continue petroleum production in the area to which such lease relates.
- (4) The Commission shall, during the term of a petroleum mining lease-
- (a) verify the implementation of the work commitments by the applicable lessee and its compliance with the applicable field development plan;
 - (b) monitor capital and operating costs incurred by the applicable lessee; and
 - (c) ensure that upstream petroleum operations at all times are carried out to conform with the standards required by this Act and by regulation made under this Act.

83. Confidentiality

- (1) A licensee or lessee shall for each petroleum prospecting licence or petroleum mining lease provide a yearly summary of royalties, fees, taxes, profit oil shares and other payments to Government within six months after each calendar year to the Commission and the Minister of Finance through the Accountant-General of the Federation and in case of joint ventures, where an operator makes payments to Government, the operator shall provide the required information and where individual holders of the licence or lease make such payment, the individual holders shall be responsible for providing the information and where consolidation applies on a consolidated basis.
- (2) The Commission shall define the required detail and classification of the summary under subsection (1) and the summaries shall be non-confidential and published on the website of the Commission.
- (3) The text of any existing contract, licence or lease and any amendment or side letter with NNPC shall-
 - (a) not be confidential;
 - (b) be published on the website of the Commission within one year after the effective date; and
 - (c) be provided to the Commission by a contractor of NNPC, licensee or lessee within one year after the effective date.
- (4) A contractor, licensee or lessee who does not or partially provides the Commission with the required information referred to in subsection (3), within the stipulated time contravenes the provisions of this Act and is liable to an administrative penalty of the sum of US \$10,000 for every day the default subsists.

- (5) The text of any new licence, lease or contract or amendment to it shall not be confidential and shall be published by the Commission immediately following the granting or signing of such texts.
- (6) A licensee or lessee who obtained geological, geophysical, geochemical and other technical petroleum data during upstream petroleum operations as determined by the Commission shall immediately provide the data to the National Data Repository of the Commission.
- (7) The data referred to in subsection (6) shall not be confidential, except for-
 - (a) trade secrets and proprietary information and other information as approved by the Commission;
 - (b) the earlier of a period of five years or the period until the relinquishment date of the licence area under section 88 (1) and (2), with respect to exploration data including exploration and appraisal wells and geophysical surveys;
 - (c) 10 years for specific surveys carried out under section 71(6) of this Act; and
 - (d) such other information for such periods as determined in the National Data Repository Regulations, provided, however, that information related to development wells and oil and gas field production related data shall not be confidential.
- (8) Data in the National Data Repository of the Commission shall be accessible to any interested person under such terms as may be determined by the Commission, provided, however, that the respective fees required for making non-confidential data available shall not exceed the reasonable cost of copying any data and a minimal hourly payment for the use of work stations.

84. Power to enter into contract

- (1) Unless otherwise prohibited by this Act or regulation under this Act, where the Minister grants a licence or lease, a licensee or lessee may enter into a contract with a third party for the exploration, prospecting, production or development of crude oil or natural gas or both.
- (2) The power to enter into contracts under subsection (1) shall not confer on any licensee or lessee the right to assign an interest in any licence or lease, except in accordance with the provisions of this Act.

85. Model contracts

- (1) The Commission shall develop a model licence and model lease, which may contain an obligation to comply with fiscal obligations and other provisions related to fees, rents, royalties for such contract attached to or incorporated in the model licence or model lease.

- (2) The model licence and model lease referred to under subsection (1) shall comply with the provisions of this Act and may contain the following additional contractual provisions-
- (a) a production sharing contract for the exploration, development and production of petroleum on terms under which the financial risk-bearing party shall recover costs from a share of production as established in the contract from the applicable area;
 - (b) a profit sharing contract which is a production sharing contract whereby the profit oil is provided in cash to Government;
 - (c) a risk service contract for the exploration, development and production of petroleum on terms under which the financial risk-bearing party shall recover costs by a payment in cash or in kind from petroleum produced from the applicable area;
 - (d) a concession agreement for exploration, development and production of petroleum, which may include an incorporated or unincorporated joint venture with NNPC Limited; and
 - (e) any contract being a variation of the contracts under paragraphs (a), (b) (c) or (d) or a contract which, at the time, is an internationally recognised form of contract for the exploration and production of petroleum.
- (3) A licence or lease described under subsection (1) shall not be granted by the Minister unless the appropriate model contract is attached to the licence or lease as a guide on the relevant fiscal obligations.
- (4) A contract as provided for under section 85 (2) (d) of this Act shall include a carried interest provision, whereby-
- (a) the Government through the NNPC Limited has the right to participate up to 60% in the contract or identified as a bid parameter;
 - (b) the right to participate shall be from any time upon the granting of the licence or lease;
 - (c) the contract shall stipulate that Government shall refund fully its proportionate share of the unrecovered proven costs from the date of its participation and such refunded cost shall relate to development and production and shall not include bonuses and penalties, interest, premium or markups on cost;
 - (d) the contract shall not require any upfront payment by the Government;
 - (e) the nature, the validity and quantum of the unrecovered costs to be refunded shall be determined or verified by an agreed expert determination procedure;

- (f) the refund obligation under this subsection may be in the form of cash or kind from future share of production or entitlements from the effective participation date; and
- (g) the terms, conditions and financial details of any right of participation by the government under this subsection shall be contained in the model contract prepared by the commission in consultation with NNPC Limited.

86. Duration and renewal of leases and licences

- (1) A petroleum mining lease granted under section 81 of this Act shall be for a maximum period of 20 years, which term shall include the development period prescribed under subsection (4).
- (2) Where a petroleum mining lease does not initiate regular commercial production within the stipulated development period prescribed under subsection (4), the Commission shall recommend to the Minister to revoke the lease or license at the end of the stipulated development period, unless the lessee or licensee can provide to the Commission a valid reason that in the Commission's opinion is substantial, in which case the Commission shall recommend to the Minister to extend the development period accordingly.
- (3) Where a petroleum mining lease is revoked under subsection (2), the applicable acreage shall vest in the Government and be controlled and administered by the Commission, which may be subject to a new petroleum mining lease granted in accordance with section 81 of this Act.
- (4) The development period for a petroleum mining lease granted under section 81 of this Act shall be the period established in the field development plan under section 79 (2) (n) of this Act and where development period is not stipulated, the development period shall be—
 - (a) five years for an onshore lease; and
 - (b) seven years for a lease in shallow water or deep offshore or a lease in a frontier acreage.
- (5) Acreage in respect of an expired or revoked petroleum mining lease under this Act shall be subject to a new bidding process under section 73 of this Act where there is still commercial production possible, unless the term of the petroleum mining lease is extended under this Act.
- (6) A petroleum mining lease which continues to produce in paying quantities may be renewed by the Commission in accordance with section 87 of this Act for one or more successive additional terms, of not more than 20 years each, provided that—
 - (a) the field continues to produce in paying quantities; and
 - (b) all rents, royalties, taxes and other applicable fiscal obligations stipulated under this Act shall continue, subject to section 87 of this Act.

- (7) A petroleum mining lease which ceases to produce in paying quantities for a period of not less than 180 days may, except for force majeure or any other reason acceptable to the Commission, be revoked by the Commission.
- (8) A lessee of a petroleum mining lease who intends to suspend production for more than 180 days and to resume production at a later date, shall submit to the Commission a specific shut-in plan and a commitment to restart production in accordance with the shut-in plan.

87. Conditions for renewal of petroleum mining leases

- (1) A lessee of a petroleum mining lease may, not less than 12 months before the expiration of the lease, apply in writing to the Commission for a renewal, of leased area or any part of it.
- (2) A petroleum mining lease shall be renewed by the Commission where it is satisfied that the lessee-
 - (a) has fulfilled its obligations relating to the development of the lease area;
 - (b) has fully met all payments requirement under this Act or any other enactment in respect of royalties, rents, taxes and fees relating to the petroleum mining lease;
 - (c) is not in default of any obligation or condition relating to the lease; and
 - (d) has discharged all operational obligations in compliance with applicable rules and regulations.
- (3) The renewal referred to under subsection (2) shall be on terms and conditions determined by the Commission and the lessee shall pay a renewal bonus of an amount specified by the Commission based on the percentage of the market value on the renewal date prescribed in the regulation made under this Act.
- (4) The Commission may, in public interest, change, impose or add new lease conditions, which shall be published in the Federal Government Gazette.

88. Relinquishment

- (1) Prior to the expiration of the initial exploration period of three years or of the optional extension period of three years under section 77 (1) of this Act, a licensee shall relinquish every area that is not an appraisal area, retention area or lease area based on parcels or sub-parcel under section 69 of this Act.
- (2) Prior to the expiration of the initial exploration period of five years or of the optional extension period of five years under section 77 (2) of this Act, a licensee shall relinquish every area that is not an appraisal area, retention area or lease area on parcel or sub-parcel under section 69 of this Act.

- (3) Every appraisal area or retention area shall be retained as provided for under this Act and where one or more declarations of a commercial discovery have been made, the petroleum prospecting licence shall be extended until all related petroleum mining leases have been granted or denied.
- (4) A licensee of a petroleum prospecting licence may voluntarily relinquish parcels and sub-parcels under section 69 of this Act, provided that the –
 - (a) licensee has complied with the obligation in the petroleum prospecting licence; and
 - (b) shape of a relinquished block shall be approved by the Commission to maintain acreage of shape that is viable for award in a future licensing round.
- (5) After 10 years of the commencement of a petroleum mining lease-
 - (a) the applicable lessee shall relinquish all parcels which do not fall within the boundary of a producing field under this Act; and
 - (b) any formation deeper than the deepest producing formation shall be relinquished, and the deep rights shall vest in the Government.
- (6) Upon the expiration of any significant gas discovery retention period in respect of a petroleum prospecting licence, every area relating to the significant gas discovery retention area shall be relinquished, unless the applicable licensee has declared a commercial discovery in such significant gas discovery retention area.
- (7) An area or zone relinquished under this section, shall be vested in the Government and administered by the Commission and the relinquishments shall be in a north-south, east-west direction and defined in a rectangular or square shaped compact unit.
- (8) Any rent paid in respect of an area or zone that is relinquished under this section shall not be refundable and such relinquishment shall be without prejudice to any obligation or liability imposed by or incurred under the applicable licence or lease.
- (9) Where the deep rights have been relinquished and subsequently granted to a third party under subsection (5) (b), the Commission shall ensure that the licensees or lessees of the overlapping petroleum rights shall enter into a cooperation protocol based on good international petroleum industry practices, dealing with matters such as non-interference measures, location of wells, construction of gathering lines, unauthorised production from reservoirs, notice of dangerous operations, joint emergency response, joint use of certain facilities and pipelines, land and water rights and such other matters as the Commission deems required for optimal petroleum operations pursuant to regulations.

89. Surrender of licence and lease

- (1) Notwithstanding the provisions of this Act on relinquishment, a holder of a petroleum prospecting licence, petroleum exploration licence or

petroleum mining lease may surrender part or the whole of the licenced or leased area, provided that the licensee or lessee has-

(a) complied with obligations imposed by or incurred under the applicable licence or lease; and

(b) given three months' notice in writing to the Commission prior to the surrender.

(2) Any rent or fee paid prior to a surrender under subsection (1) shall not be refundable and the licence or lease surrendered shall be without prejudice to any obligation or liability imposed by or incurred under the applicable licence or lease.

90. Rights of way relating to upstream petroleum operations

Subject to applicable law, terms and conditions prescribed by the Commission, a holder of a petroleum prospecting licence, petroleum exploration licence or petroleum mining lease is entitled with the approval of the Commission to rights of way for the laying, operation and maintenance of gathering lines, telephone lines, power lines and other similar lines through or across the areas the holder may require.

91. Rights of way reserved for the Commission

(1) Subject to subsection (2), the Commission may preserve in accordance with applicable law, a right of way, easement or other right over an area to which a petroleum prospecting licence, a petroleum exploration licence or a petroleum mining lease, which the Commission considers necessary for the laying, operation and maintenance of pipelines, telephone lines and power lines and any right of way or other right reserved shall continue for the benefit of any person to whom the Commission may subsequently grant the same.

(2) Where a holder of a petroleum prospecting licence, petroleum exploration licence or petroleum mining lease is of the opinion that a reservation made by the Commission under subsection (1) affects the health, safety or environment of a person, the licensee or lessee may object to the reservation in writing and the Commission shall reconsider the reservation in light of the objection.

(3) The holder of a petroleum prospecting licence, a petroleum exploration licence or a petroleum mining lease shall-

(a) be entitled to enter and remain on the land that is the subject of the licence or lease and do such things that are not prohibited by applicable law or under the licence or lease; and

(b) comply with applicable law relating to town or country planning or regulating the construction, alteration, repair or demolition of buildings, or providing for similar matters, which relates to the carrying out of operations authorised by the licence or lease.

92. Voluntary conversion of an oil prospecting licence to a petroleum prospecting licence or oil mining lease to petroleum mining lease

- (1) A holder of an existing oil prospecting licence or oil mining lease may enter into a voluntary conversion contract under this Act.
- (2) A licensee or lessee under a conversion contract shall benefit from the fiscal provisions under Chapter 4 of this Act, where the licensee or lessee complies with the provisions of this Act.
- (3) The conversion contract shall contain a termination clause of all outstanding arbitration and court cases related to the respective oil prospecting licence or oil mining lease and-
 - (a) any stability provisions or guarantees provided by NNPC in respect of oil prospecting licences or oil mining leases to be converted shall be null and void; and
 - (b) the incentive provisions contained in sections 11 and 12 of the Petroleum Profit Tax Act shall not apply.
- (4) A conversion contract shall be concluded at a date (“conversion date”) which is the earlier of-
 - (a) 18 months from the effective date; and
 - (b) the expiration date of the oil mining lease or date of conversion of the oil prospecting licence to an oil mining lease.
- (5) Prior to the conversion date, the terms applicable to the oil prospecting licence or oil mining lease prior to the effective date shall continue to apply.
- (6) Where a holder of an existing oil prospecting licence or oil mining lease does not enter into a conversion contract prior to the conversion date, the terms and conditions applicable to the oil prospecting licence or oil mining lease prior to the effective date of this Act shall continue to apply to the oil prospecting licence or oil mining lease, subject to sections 124 (2), 125 (6), 174 (6), 303 (1) and 311 (2) (b) of this Act.
- (7) Where an oil prospecting licence is converted, the term of years included in such licence shall apply to the converted petroleum prospecting licence.

93. Relinquishment upon renewal or conversion of an oil mining, lease

- (1) A holder of oil mining lease, including oil mining lease that is subject to production sharing contract, shall at the renewal date applicable to the oil mining lease or at the conversion date, designate each area and zone of the oil mining lease as areas and zones-
 - (a) which, in the opinion of the holder, merit appraisal and for which the holder of the oil mining lease is prepared to present an appraisal program under section 78 of this Act;

- (b) in respect of which the holder is prepared to make a declaration of a commercial discovery under section 78 of this Act and submit a field development plan to the Commission under section 79 of this Act;
 - (c) in respect of which the holder is prepared to make a declaration of a significant gas discovery or a significant crude oil discovery under section 78 of this Act and submit an application for approval of a retention area;
 - (d) in respect of which development of a field is underway based on prior approvals after having declared the discovery commercial or if no such declaration was made after having made a final investment decision to develop the field; and
 - (e) in respect of which regular commercial production is occurring.
- (2) Where the total acreage selected under subsection (1) is less than 40% of the area to which the applicable oil mining lease applies, the holder may select additional areas covered by the oil mining lease for conversion to a petroleum prospecting licence in such a manner that the total of all areas selected shall not be more than 40% of the oil mining lease area and where the total acreage selected under subsection (1) is more than 40%, the holder shall be entitled to keep such larger area, consisting solely of the selected areas.
- (3) Any selected area under subsection (2) shall be based on parcels.
- (4) Areas and zones subject to an oil mining lease and not selected by the holder under subsections (1) and (2) shall be relinquished by the holder.
- (5) The relinquishment date for the purpose of subsection (4) shall be the renewal date or where the holder of the oil mining lease decides to convert under section 92 (1) of this Act, the conversion date.
- (6) Subject to section 94 of this Act on the applicable relinquishment date, the Commission shall convert the applicable oil mining lease in respect of each area and zone-
- (a) designated by a holder under subsection (1) (a), (b), (c) or (2) into a petroleum prospecting licence in accordance with section 78 of this Act, with fiscal terms as applicable under section 267 (b) and other terms of Chapter 4 of this Act for new acreage and with the relinquishment date being the effective date for such petroleum prospecting licence; and
 - (b) selected under subsection (1) (d) and (e), into petroleum mining leases, with fiscal terms as applicable under section 267 (a) and other terms of Chapter 4 of this Act to the lease, provided that, for-

- (i) production sharing contracts for the determination of the profit oil sliding scale based on cumulative production, the total production from all petroleum mining leases shall be applicable, and
 - (ii) royalty purpose, the production of each petroleum mining lease shall be the basis.
- (7) Where a licensee of an oil prospecting licence, including any oil prospecting licence that is subject to a production sharing contract, voluntarily opts to convert its licence to a petroleum prospecting licence under section 92 of this Act, it shall select as provided in subsection (1) the areas and zones indicated in this subsection upon the conversion date and the Commission shall convert the applicable oil prospecting licence of the areas and zones-
 - (a) designated by a holder under section 93 (1) (a), (b) and (c) of this Act as areas to be continued under the petroleum prospecting licence under this Act, with fiscal terms as applicable under section 267 (b) and other terms under Chapter 4 of this Act for new acreage;
 - (b) selected under section 93 (1) (d) and (e) of this Act shall be converted into petroleum mining leases with fiscal terms as applicable under section 267 (a) and other terms of Chapter 4 of this Act, applicable to these leases, provided that-
 - (i) with respect to production sharing contracts for the determination of the profit oil sliding scale based on cumulative production, the total production from all petroleum mining leases shall be applicable, and
 - (ii) for royalty purposes, the production of each petroleum mining lease shall be the basis; and
 - (c) the remaining area shall continue as exploration area under the petroleum prospecting licence, with fiscal terms as applicable under Chapter 4 of this Act for new acreage.
- (8) With respect to existing oil mining leases where NNPC held vested rights to natural gas prior to the effective date of the Act, under a conversion pursuant to subsection (6) (a) and (b), NNPC Limited shall retain these rights and where NNPC Limited relinquishes such rights, the conversion contract under section 92 (1) of this Act, shall include a consideration to NNPC Limited for the market value of the rights relinquished.

94. Marginal field

- (1) A producing marginal field shall be allowed to continue to operate under the original royalty rates and farm out agreements, but shall convert to a petroleum mining lease under this Act, with terms applicable under sections 267 (b), 302, and other provisions under the Act within 18 months from the effective date.

- (2) A discovery declared as a marginal field prior to 1st January, 2021 and is not producing shall be converted to petroleum prospecting licence and shall benefit from the terms for new acreage under Chapter 4 of this Act.
- (3) Where the discovery has been transferred to Government, the Commission is entitled to offer the petroleum prospecting licence in a bid round under section 74 of this Act.
- (4) Within three years of the effective date, any marginal field that has not been transferred to Government, shall be subject to the following process and the holder of the oil mining lease-
 - (a) present a field development plan for the marginal field;
 - (b) with the consent of the Commission and on terms and conditions as the Commission may approve under regulations, farm out the discovery; or
 - (c) relinquish the field in accordance with the provisions of this Act.
- (5) The consent of the Commission to the farm-out of a marginal field under subsection (4) (b) shall, amongst others, be subject to the farmee presenting a field development plan over a period of time agreed with the Commission and a regulation made under this Act.
- (6) The failure to present a field development plan under section 94 (4) (a) of this Act or within the time frame specified under section 94 (5) of this Act shall require the relinquishment of the marginal field.
- (7) A marginal field relinquished under subsection (4) (c) or (6) shall be vested in the Government and be administered by the Commission.
- (8) For the purpose of this section-
 - (a) “marginal field” means a field or discovery which has been declared a marginal field prior to 1st January 2021 or which has been lying fallow without activity for seven years after its discovery prior to the effective date; and
 - (b) “farm-out” means an agreement between the holder of a petroleum mining lease or petroleum prospecting licence and a third party, which permits the third party to explore, prospect, win, work and carry away any petroleum encountered in a licence or lease area during the validity of the licence or lease.
- (9) No new marginal fields shall be declared under this Act.

95. Assignments, mergers, transfers and acquisitions

- (1) A holder of a petroleum prospecting licence or petroleum mining lease shall not assign, novate or transfer his licence or lease or any right, power or interest, or a shareholder of an incorporated joint venture shall not sell or transfer its shares without prior written consent of the Minister.

- (2) The consent of the Minister under subsection (1) shall be granted upon the recommendation of the Commission.
- (3) For the purpose of subsection (1), a change of control in the holder of a licence or lease under subsection (1) shall be deemed to be an assignment.
- (4) A licensee or lessee wishing to assign, novate or otherwise transfer its interest, or a shareholder of an incorporated joint venture wishing to sell or transfer its shares under subsection (1), shall make an application for approval of the transfer to the Commission in the format prescribed by the Commission, and be accompanied with any other information that may be pursuant to any regulations published by the Commission.
- (5) Notwithstanding the provisions of subsection (1), a holder of a licence or lease may by way of security, wholly or partly assign, pledge, mortgage, charge or hypothecate its interests under the applicable licence, lease or grant a security interest in respect of the interest, provided that the consent of the Commission shall be obtained.
- (6) The Commission shall within 60 days of the receipt, act on the application of the licensee or lessee under subsection (4) and on the request for consent under subsection (5) and the consent of the Commission with respect to subsection (5) shall not be unreasonably withheld.
- (7) Within 60 days of the receipt of the recommendation of the Commission under subsection (4), the Minister shall consider it for approval, such approval not to be unreasonably withheld, and where-
 - (a) the Minister rejects the recommendation of the Commission, the Minister shall provide the reason for such rejection; and
 - (b) no response on the application has been received within 60 working days from the receipt of the recommendation of the Commission, the consent of the Minister under subsection (1) shall be deemed to have been granted.
- (8) Where the consent of the Minister is granted in respect of the application for a transfer, the Commission shall promptly record the transfer in the appropriate register.
- (9) The Commission shall communicate the refusal or approval of an application for an assignment, novation or transfer of a licence or lease in writing to the applicant.
- (10) Where the application for an assignment or a transfer of a petroleum prospecting licence or petroleum mining lease is refused, the Commission shall inform the applicant of the reasons for the refusal and may give reasonable time within which further representations may be made by the applicant or by third parties in respect of the application.

- (11) The Minister may grant consent to an assignment, novation or transfer of a petroleum prospecting licence or petroleum mining lease, subject to the following terms and conditions which the Commission may consider appropriate, that the proposed transferee-
- (a) is a company incorporated in Nigeria;
 - (b) is of good reputation and standing;
 - (c) has sufficient technical knowledge, experience and financial resources to enable it effectively carry out all responsibilities of a licensee or lessee under the licence or lease; and
 - (d) shall comply with the Federal Competition and Consumer Protection Act.
- (12) The Commission shall make regulation to prescribe for payment of fees as a condition for any transaction under subsection (1), which fee shall be based on a percentage of the value of the transaction and shall not be tax deductible.
- (13) The consummation and details of any transaction to which subsection (1) applies shall be-
- (a) fully disclosed to the Federal Inland Revenue Service by the parties to the transaction; and
 - (b) published in the Federal Government Gazette by the Commission.
- (14) For the purpose of this section, “change of control” means any person or persons acting jointly or in concert, to acquire direct or indirect beneficial ownership of a percentage of the voting power of the outstanding voting securities of the holder, by contract or otherwise, that exceeds 50% at any time.
- (15) A holder of a petroleum exploration licence shall not assign, novate or transfer his licence or any right, power or interest without prior written consent of the Commission.

96. Grounds for revocation of licence or lease

- (1) Upon receipt of the written recommendation of the Commission for revocation, the Minister may revoke a petroleum prospecting licence or petroleum mining lease, where the applicable licensee or lessee-
- (a) fails to conduct petroleum operations in accordance with good international petroleum industry practices, the provisions of this Act and any other relevant legislation;
 - (b) interrupts production for a period of over 180 consecutive days without justification or as provided for in the applicable licence, lease or approved field development plan, provided that an event of force majeure shall be an acceptable justification for interruption;

- (c) fails to fulfil the terms and conditions of the applicable licence or lease or the approved field development plan;
 - (d) fails to pay to Government, as they become due, rents, royalties, taxes or other payments or production shares under this Act;
 - (e) fails to furnish any reports or data on operations as required by law after having been advised in writing by the Commission of such failure;
 - (f) assigns, novates or otherwise transfers any interest in the applicable licence or lease other than in accordance with section 95 of this Act;
 - (g) has obtained an interest, in the applicable licence or lease based on false representation or contrary to corrupt practices and money laundering laws;
 - (h) is declared by a court of competent jurisdiction to be insolvent, bankrupt or is liquidated, in each case except as part of a solvent plan or scheme of re-organisation, amalgamation or arrangement;
 - (i) has failed to comply with environmental obligations required by applicable law or by the provisions of the applicable licence or lease;
 - (j) is owned wholly or in part, directly or indirectly or is controlled by a former or serving public official or member of the Government, who obtained his interest in the applicable licence or lease other than as permitted by applicable law;
 - (k) does not submit and advance a field development plan and work commitment under sections 78 and 79 of this Act;
 - (l) fails to abide by any expert determination, arbitration award or judgment arising from the dispute resolution provisions set forth in a licence, lease or this Act;
 - (m) fails to comply with domestic crude oil supply or domestic gas delivery obligations under this Act and any subsidiary regulation; or
 - (n) fails to comply with the host communities obligations under this Act-
- (2) Subsection (1) (j) shall apply to a former public official or member of Government only where the applicable interest was acquired while the public official was in office or was a member of the Government.

97. Notice of default prior to revocation

- (1) Prior to the revocation of a petroleum prospecting licence or petroleum mining lease by the Minister under section 96 of this Act, the Commission shall-

- (a) serve a notice of default on the applicable licensee or lessee stating the grounds upon which the Commission may recommend a revocation of the licence or lease to the Minister; and
 - (b) provide the licensee or lessee with a remediation period of not less than 60 days within which to remedy the default.
- (2) Where the Commission is satisfied with the remedy provided by the licensee or lessee under subsection (1) (b), the revocation process shall terminate.
- (3) Where, at expiration of the remediation period provided under subsection (1) (b), the default persist, the licence or lease may subject to the provisions of section 99 of this Act, be revoked in accordance with section 96 of this Act.
- (4) A notice of default shall be-
- (a) sent by the Commission to the last known address of the licensee or lessee or its legal representative in Nigeria, or
 - (b) published in the Federal Government Gazette or on the website of the Commission, each of which shall constitute sufficient notice to the licensee or lessee of the notice of default.
- (5) Revocation of a petroleum prospecting licence or petroleum mining lease shall be without prejudice to any-
- (a) liability or obligation which the licensee or lessee may have incurred in favour of the Commission, the Government or any third party; or
 - (b) claim, which the Commission, the Federal Government or any third party may make against the licensee or lessee.
- (6) A revocation decision shall be published in the Federal Government Gazette and the Commission shall amend relevant registers maintained by it to reflect the revocation.

98. Administration of a revoked producing lease

- (1) Within 30 days of the revocation of a petroleum mining lease or participating or shareholder interest in a petroleum mining lease which is producing, the Minister may, on the recommendation of the Commission, appoint an interim operator to ensure petroleum operations continue from the areas and zones subject to the petroleum mining lease based on good international petroleum industry practices.
- (2) The interim operator appointed under subsection (1) shall serve for a period to be determined by the Commission and the related contract shall be on a service fee basis.

- (3) During the tenure of an interim operator, the Commission may conduct a fair, transparent and competitive bidding process for the grant of a new petroleum mining lease to replace the revoked petroleum mining lease.

99. Power of revocation of participating or shareholders interest

- (1) Where two or more persons are holders of a petroleum prospecting licence or petroleum mining lease and one or more of the grounds for revocation set forth in section 96 of this Act applies to not all of the holders, the Minister-
 - (a) may, in accordance with section 96 of this Act, revoke the participating or shareholders interest of the holder or holders to which the grounds apply; and
 - (b) shall not revoke the interests of the other holder or holders to which the grounds do not apply.
- (2) A holder to which the grounds apply under subsection (1) (a) is referred to as a “defaulting holder” and a holder to which the grounds do not apply under subsection (1) (b) is referred to as a “non-defaulting holder”.
- (3) Upon a revocation of an interest under subsection (1) (a), the rights of the defaulting holder shall cease without prejudice to any obligation or liability or imposed on the defaulting holder under the terms and conditions of the licence or lease prior to the time of the revocation.
- (4) The interests of each non-defaulting holder shall not be affected by a revocation of the interest under subsection (1) (b) and the non-defaulting holders shall take such measures as provided for under the joint operating agreement or shareholder agreement to redistribute the revoked participating or shareholder interest to the non-defaulting holders or third parties.
- (5) Where subsection (1) applies, an assignment to a third party may require the approvals stipulated under this Act and any replacement of the operator will require the approval of the Commission.
- (6) The Minister may revoke a licence or lease, where a non-defaulting holder under subsection (1) (b), fails to-
 - (a) take responsibility for the payment of rents, royalties, taxes, production shares, profit shares or other contractual payments to Government of the defaulting holder under the licence or lease; or
 - (b) comply with any other obligation under the licence or lease in a manner that may result in the revocation of the licence or lease under section 96 of this Act.

100. Fees, royalties; rents and other payments to Government

- (1) A holder of a petroleum prospecting licence or petroleum mining lease shall pay to the Government royalties, fees, rents and production or profit shares in the amount and time as prescribed in the licence or lease under this Act and regulations made by the Commission.
- (2) Where royalties, fees, rents, production or profit shares or other required payment to Government due under this section remains unpaid for a period of 30 days after the date when it becomes due for payment, it shall be considered as a debt to the Commission with interest accruing at a prevailing Central Bank of Nigeria (CBN) rate to be provided for in a regulation issued by the Commission.
- (3) The Commission may, after the 30 days period referred to under subsection (2) and until the debt is repaid, together with accrued and unpaid interest-
 - (a) enter into and upon any land, property or premises owned, possessed or occupied by the holder of the licence or lease;
 - (b) seize, distrain and sell any petroleum, petroleum products, engines, machinery, tools, implements or other effects belonging to the holder of the licence or lease, and the costs incurred by the Commission in connection with the seizure, distress and sale shall be added to the debt; and
 - (c) out of money arising from the sale of any item referred to in paragraph (b), pay off the debt and any surplus shall be paid by the Commission to the holder of the licence or lease.
- (4) Payment to Government referred to under this section shall not be waived or discounted.
- (5) Nothing in this section shall be interpreted as to reduce or amend the provisions of section 96 (1) (d) of this Act.

101. Damage to protected and venerated objects

- (1) A licensee or lessee shall not enter upon, occupy or exercise any of the rights or powers conferred by its licence or lease in relation to any-
 - (a) area held to be sacred, the question as to whether the area is sacred or not shall be decided by the customary court of the area, where necessary;
 - (b) part of the following relevant areas, except it obtains a written permission from and subject to conditions as may be imposed by the Commission, any part-
 - (i) set apart for, used or appropriated or dedicated to public purposes,
 - (ii) occupied for the purposes of the Government of the Federation or a State,

- (iii) situate within a township, town, village, market, burial ground or cemetery,
 - (iv) which is the site of or is within 50 yards of any building, installation, water reservoir, dam, public road or tramway or which is appropriated for or situate within 100 metres of any railway, or
 - (v) of the land under cultivation;
- (c) any part consisting of privately owned or legally occupied land other than private land falling under paragraph (b) except permission in writing to do so has been obtained by the licensee or lessee from the Commission, which may grant permission if the licensee or lessee has-
- (i) given previous notice in writing to the Commission specifying by name or other sufficient designation and by quantity, the land proposed to be occupied and the purpose for which it is required, and
 - (ii) paid or tendered to the person in lawful occupation or the owner or owners of the land fair and adequate compensation; and
- (d) dispute under paragraph (c) as to who is in lawful occupation or the owner of any land or as to the amount of any compensation payable, the licensee or lessee, pending the determination of the dispute, shall deposit with the Federal High Court, with jurisdiction over the matter, such sum as shall be determined by the Federal High Court to be reasonable compensation payable to the rightful owner or occupier of the land, having due regard to the existing regulatory framework.
- (2) A person shall not, in the course of petroleum operations-
- (a) injure or destroy any tree or object which is-
 - (i) of commercial value, or
 - (ii) the object of veneration to the people resident within the licence or lease area;
 - (b) damage or destroy any building or property; or
 - (c) disturb or damage the surface of the land or any other rights to any person who owns or is in lawful occupation of the surface area covered by the licence or lease.
- (3) A licensee or lessee who causes damage under subsection (2) shall pay fair and adequate compensation to the persons or communities directly affected by the damage or injury.

- (4) The amount of compensation payable under subsections (1) (c) (ii) and (3) shall be determined by the Commission and prescribed by regulation made under this Act.
- (5) Where a licensee or lessee fails to pay compensation as prescribed under subsection (4) within 30 days, the Commission may apply sanctions in accordance with regulations made under this Act.

102. Environmental management

- (1) A licensee or lessee who engages in upstream and midstream petroleum operations shall within-
 - (a) one year of the effective date, or
 - (b) six months after the grant of the applicable licence or lease, submit for approval an environmental management plan in respect of projects which require environmental impact assessment to the Commission or Authority, as the case may be.
- (2) The environmental management plan under subsection (1) shall be in accordance with the extant Acts.
- (3) The Commission or Authority, as the case may be, shall approve the environmental management plan, where-
 - (a) it complies with relevant environmental Acts; and
 - (b) the applicant has the capacity or has provided for the capacity to rehabilitate and manage negative impacts on the environment.
- (4) The Commission or Authority, as the case may be, shall in considering the environmental management plan, take into account the policy thrust of the Government regarding environmental protection and management practices.
- (5) The Commission or Authority, as the case may be, may request for additional information from the licensee or lessee and may direct that the environmental management plan be adjusted in a manner the Commission or Authority may require.
- (6) The Commission or Authority, as the case may be, may after its approval of an environmental management plan and after engagement with the operator of a licence or lease, call for an amendment of the environmental management plan.
- (7) Chemicals shall not be utilised for upstream petroleum operations, except the Commission grants an applicable permit and approval.

103. Financial contribution for remediation of environmental damage

- (1) As a condition for the grant of a licence or lease and prior to the approval of the environmental management plan by the Commission or Authority, a licensee or lessee shall pay a prescribed

financial contribution to an environmental remediation fund established by the Commission or Authority, as the case may be, for the rehabilitation or management of negative environmental impacts with respect to the licence or lease.

- (2) In determining the amount of the financial contribution, the Commission or Authority as the case may be, shall take into consideration the size of the operations and the level of environmental risk that may exist.
- (3) The financial contribution to an environmental remediation fund under subsection (1) shall be subject to audit by the licensee or lessee, in accordance with guidelines that the Commission or Authority may, as the case may be, issue.
- (4) Where licensee or lessee fails to rehabilitate or manage or is unable to undertake the rehabilitation or management of any negative impact on the environment, the Commission or Authority, as the case may be, may, upon written notice to the holder, apply the fund under subsection (1) to rehabilitate or manage the negative environmental impact.
- (5) A licensee or lessee shall, under subsections (1) and (2) assess its environmental liability annually and increase its financial contribution to the satisfaction of the Commission or Authority, as the case may be.
- (6) Where the Commission or Authority, as the case may be, is not satisfied with the assessment and financial contribution referred to in this section, the Commission or Authority, as the case may be, may appoint an independent assessor to conduct the assessment and determine the financial contribution.

104. Gas flaring penalties

- (1) A licensee, lessee or marginal field operator that flares or vents natural gas, except –
 - (a) in the case of an emergency,
 - (b) pursuant to an exemption granted by the Commission, or
 - (c) as an acceptable safety practice under established regulations, commits an offence under this Act and is liable to a fine as prescribed by the Commission in regulations under this Act.
- (2) A fine due under this section shall be paid in the same manner and be subject to the same procedure for the payment of royalties to the Government by companies engaged in the production of petroleum.
- (3) A fine paid under this section shall not be eligible for cost recovery or be tax deductible.

- (4) Money received from gas flaring penalties by the Commission under this section, shall be for the purpose of environmental remediation and relief of the host communities of the settlers on which the penalties are levied.

105. Prohibition of flaring or venting of natural gas

- (1) A licensee or lessee shall pay a penalty prescribed pursuant to the Flare Gas (Prevention of Waste and Pollution) Regulations.
- (2) The Commission shall have the right to take free of charge natural gas that is destined for flaring at the flare stack.

106. Measurement of flared natural gas

- (1) A licensee shall, prior to the commencement of petroleum production, install metering equipment conforming to the specifications prescribed on every facility from which natural gas may be flared or vented as the Commission or the Authority may prescribe in a regulation.
- (2) A licensee or lessee who fails or refuses to install metering equipment under subsection (1) commits an offence and is liable to a fine as the Commission or the Authority may prescribe under a regulation.

107. Exemption

The Commission or the Authority may grant a permit to a licensee or lessee to allow the flaring or venting of natural gas for a specific period-

- (a) where it is required for facility start-up; or
- (b) for strategic operational reasons, including testing.

108. Natural gas flare elimination plan

Notwithstanding any provision to the contrary under this Act, a licensee or lessee producing natural gas shall, within 12 months of the effective date, submit a natural gas flare elimination and monetisation plan to the Commission, which shall be prepared in accordance with regulations made by the Commission under this Act

109. Domestic crude oil supply obligations

- (1) The supply of crude oil and condensates for the domestic market shall, subject to subsection (2), be on a willing supplier and willing buyer basis.
- (2) The Commission may issue regulations or guidelines on the mechanism for the imposition of a domestic crude oil supply obligation on lessees of upstream petroleum operations, including applicable penalties.

- (3) The Authority shall supply the Commission on a regular basis the crude oil requirements of refineries in operation and where shortages or inadequate supply conditions occur report such conditions to the Commission.
- (4) The Commission shall ensure that the domestic crude oil supply obligation contains the following, that-
 - (a) crude oil may only be sold to holders of crude oil refining licences, whose refineries are in operation;
 - (b) the supply of crude oil shall be commercially negotiated between the lessee and the crude oil refining licensee, having regard to the prevailing international market price for similar grades of crude oil; and
 - (c) holders of crude oil refining licences shall provide payment guarantees as required by the applicable lessee, and payment for crude oil purchased pursuant to obligations shall be in US dollars or Naira, as may be agreed between the lessees or suppliers and the licensee of the refining licence.

110. Domestic gas delivery obligations

- (1) Subject to subsections (2) and (4), the Commission shall, by a regulation or guideline made under this Act, -
 - (a) prescribe and allocate the domestic gas delivery obligation among all lessees before 1st March of each year based on the domestic gas demand requirements determined or updated under section 173 of this Act; and
 - (b) ensure compliance by every lessee of the domestic gas delivery obligation.
- (2) A lessee may, on a voluntary basis, conclude contracts with wholesale customers of the strategic sectors or with wholesale gas suppliers supplying the strategic sectors for delivery of marketable natural gas on a free market basis to these customers or suppliers and notify the Commission of the contracts and where the volume of the contracts is equal to or higher than the domestic gas delivery obligation for the lessee, the lessee shall -
 - (a) be deemed to have fulfilled its domestic gas delivery obligation;
 - (b) not be a producer client of the gas aggregator; and
 - (c) inform the gas aggregator.
- (3) A lessee who has complied with its domestic gas delivery obligation or may wish to supply wholesale customers who are not part of the strategic sectors may deliver further supplies of marketable natural gas to the domestic market on a willing seller and willing buyer basis.

- (4) A wholesale gas supplier may, on a voluntary basis and following the procedure stipulated under subsection (2) –
- (a) enter into a contract with a lessee or wholesale customer of the strategic sectors for the delivery of marketable natural gas to the customers; and
 - (b) inform the Commission and Authority of the contracts.
- (5) The Commission shall require a lessee producing natural gas to carry out works and operations which may be required to increase production and to dedicate specific volume of the natural gas produced towards the requirements of the domestic market.
- (6) The volume of natural gas to be dedicated by a lessee towards the domestic gas delivery obligation shall be based on an allocation system among lessees as determined by the Commission upon consultation with the Authority with consideration of supporting infrastructure availability.
- (7) A lessee shall be obliged to deliver the volume of natural gas prescribed under subsection (6) to a wholesale customer determined by the domestic gas aggregator and at a location indicated by the domestic gas aggregator under section 156 of this Act.
- (8) Subject to the provisions of subsection (7), a lessee who fails to comply with the domestic gas delivery obligation shall incur a penalty of US \$3.50 per MMBtu not delivered, provided that, where the lessee has signed a gas purchase and sale agreement with a wholesale supplier of the strategic sectors, the penalty for failure to deliver shall be as stated in that agreement.
- (9) The penalty amount of US \$3.50 per MMBtu referred to under subsection (8) may be adjusted as the Commission may prescribe in a regulation made under this Act.
- (10) A lessee shall not incur a penalty prescribed under subsection (8), where it can establish that its failure to comply is as a result of-
- (a) force majeure;
 - (b) the inability of a purchaser to accept allocated natural gas volumes;
 - (c) the inability to transport the allocated natural gas for reasons beyond the control of the lessee; or
 - (d) the failure of a purchaser to pay for allocated natural gas volumes.
- (11) The Commission shall discontinue the imposition of domestic gas delivery obligations, where the Authority has determined under section 167 (3) of this Act that the natural gas market has attained full market status.

- (12) Upon being allocated the volumes to be supplied under the domestic gas supply obligation under subsection (1), the lessee shall submit a marketable natural gas production and supply plan consistent with these obligations to the Authority.
- (13) A producer-customer of the domestic gas aggregator shall pay compensation to customer-client for any loss suffered as a result of default to supply marketable natural gas in accordance with a gas purchase order issued by the domestic gas aggregator.
- (14) A lessee who does not comply with the domestic gas delivery obligation as directed by the Commission shall-
- (a) in addition to the penalties provided under subsection (8), not be entitled to supply natural gas to any new midstream gas export operations, provided that this provision shall not apply to gas sales agreements already entered into; and
 - (b) where the lessee is supplying natural gas to midstream gas export operations, the Commission may impose other sanctions as are prescribed in a regulation made under this Act.
- (15) An approval for the supply of natural gas for export projects shall, from the effective date, be subject to prior compliance by the lessee with its domestic gas delivery obligation.
- (16) Domestic gas delivery contracts entered into by lessees or licensees prior to the effective date and continuing after the effective date, shall be counted towards their domestic gas delivery obligation under this section.

PART III—GENERAL ADMINISTRATION OF MIDSTREAM AND DOWNSTREAM PETROLEUM OPERATIONS

111. Matter relating to licence applications

- (1) The Authority may grant, renew, modify or extend individual licences or permits, provided that, where it relates to the establishment of refineries the licence shall be issued by the Minister on the recommendation of the Authority.
- (2) The Authority shall only grant a licence for midstream or downstream petroleum operations, where-
- (a) it meets the technical standards required for petroleum operations based on good international petroleum industry practices;
 - (b) the location and size of the area occupied by the facilities or right of way is acceptable to the Authority;
 - (c) it meets the health, safety and environmental standards, as determined by the Authority; and

- (d) it provides for the efficient and economic use of facilities and pipelines.
- (3) The Authority shall only grant a licence for midstream petroleum operations where it-
- (a) does not involve excessive capital or operating expenditures;
 - (b) includes an acceptable environmental management plan under section 102 of this Act;
 - (c) includes a decommissioning and abandonment plan and a decommissioning and abandonment fund that complies with sections 232 and 233 of this Act;
 - (d) provides for the elimination of routine natural gas flaring;
 - (e) does not relate to midstream petroleum operations that would conflict with a licence already granted; and
 - (f) includes-
 - (i) a detailed programme for the recruitment and training of Nigerians in all phases of petroleum operations handled directly by the licensee or through agents and contractors of the licensee, and
 - (ii) provision for scholarship schemes, internships, continuous professional development and other training requirements.
- (4) An application for the grant, renewal or extension of a licence or permit shall-
- (a) be made to the Authority in the form and manner prescribed by regulation;
 - (b) be accompanied by the payment of a prescribed fee, where applicable, together with information or documents as prescribed in the regulations under this Act; and
 - (c) include a decommissioning and abandonment plan, where the licence contemplates the construction of pipelines, storage tanks, processing or other facilities.
- (5) The Authority may furnish an applicant for the grant, renewal or extension of a licence or permit, with non-confidential information as may be necessary to facilitate the filing of the application.
- (6) An applicant for a licence or permit, who is an affiliate of a body corporate that has applied for or holds any other licence or permit shall disclose such relationship to the Authority in its application.
- (7) The Authority shall consider information presented in respect of an application for a licence or permit, including representations from interested parties in favour of or against the granting,

extension or renewal of the licence or permit and shall inform the applicant of its decision within 90 days of the application.

- (8) Where the Authority has decided to grant a licence or permit, it shall publish a notice of its decision in the form and manner prescribed in regulations issued by the Authority.
- (9) Where the Authority decline an application, it shall inform the applicant of its refusal of the application, reasons for the refusal and may state a reasonable time within which the applicant may make further representations.
- (10) The Authority shall consider any representation made by an applicant for a licence or permit on the refusal of an application, where such representation involves new information not previously considered.
- (11) The Authority shall not consider further application or representation made by an applicant in respect of a refusal of an application previously considered and rejected by the Authority.
- (12) An applicant that is not satisfied with the reasons given by the Authority for refusal of an application may apply to the Federal High Court for a judicial review.

112. Advertisement of licence applications

- (1) The Authority shall publish a notification of any application made for the grant of a licence or renewal under this Part in a manner prescribed by a regulation under this Act.
- (2) Upon the publication of the notification of the application referred to under subsection (1), interested parties may comment or make representations to the Authority in respect of the application in accordance with the time prescribed by regulation under this Act.
- (3) Upon the grant or renewal of a licence, the Authority shall publish notification of the grant or renewal in the form and manner prescribed by regulation under this Act.

113. Licensing regulations

- (1) The Authority shall make regulations and guidelines for the grant or renewal of licence for midstream and downstream petroleum operations.
- (2) The Authority shall in consultation with the Commission ensure the implementation of the domestic crude oil supply obligation and domestic gas delivery obligation.
- (3) The Authority shall ensure third party access to facilities and pipelines for midstream and downstream petroleum operations where such facilities and pipelines are operated for the own account of the licensee and shall ensure open access where the facilities and pipelines are operated by the licensee on an open access basis.
- (4) The Authority shall encourage third party investment in facilities and pipelines for midstream and downstream petroleum operations.

- (5) The Authority may make regulations on tariffs, which shall be consistent with the tariff methodology set out in this Act.
- (6) The Authority may make such other regulations consistent with the regulatory functions of the Authority under section 32 of this Act.

114. Conditions in licences or permits

- (1) Conditions in a licence or permit issued under this Act may require the holder of a licence or permit to-
 - (a) comply with any directions of the Authority in relation to matters specified in the licence or permit;
 - (b) undertake or refrain from anything specified in the licence or permit;
 - (c) secure the approval of the Authority prior to undertaking anything specified in the licence or permit;
 - (d) comply with relevant industry codes, standards and market rules;
 - (e) undertake its activities subject to the prescribed tariffs or tariff methodology;
 - (f) provide relevant information to the Authority;
 - (g) prepare and submit to the Authority true, fair and sufficient annual statements in such form, and particulars as the Authority may require;
 - (h) make available to the Authority such books as may be requested by authorised officers of the Authority;
 - (i) impose restrictions on the disposal of assets;
 - (j) adhere to undertakings made within a business plan submitted as part of the application process;
 - (k) prepare and submit to the Authority such information and periodical reports as the Authority may require;
 - (l) publish terms of access to its transportation or distribution pipeline or petroleum liquids or gas transportation networks as the case may be; and
 - (m) operate its licence or permit and related facilities, if any, according to the standard of a reasonable and prudent operator.

- (2) The duration of a licence or permit shall be specified by regulations made under this Act and the conditions applicable to the licence or permit may cease to have effect or be modified in accordance with terms specified in the licence or permit.
- (3) A licence or permit of the same class granted by the Authority, shall contain similar conditions representing standard conditions for that class and any difference in the conditions in the licence or permit shall only be for good reasons, which shall be published in the Federal Government Gazette.
- (4) Subject to this Act, the Authority shall have power to include special conditions specific to a particular licence or permit or to a holder of the licence or permit, provided that the special conditions are designed to meet specific circumstances and shall not be a disadvantage to another holder of a licence or permit.
- (5) The Authority may specify in a licence or permit a date on which activities shall commence.
- (6) The Authority may provide that an activity be exclusive for all or part of the period of the licence or permit for a-
 - (a) specific purpose;
 - (b) specified geographical area and route; or
 - (c) combination of paragraphs (a) and (b).

115. Compensation for acquisition of land

- (1) A licence or permit shall be issued subject to compliance by the applicant with the provisions of the Land Use Act in respect of compensation for acquisition of land for midstream and downstream petroleum operations.
- (2) The Governor of a State of which land is required for carrying out operations or activities subject to a licence or permit may issue a certificate of occupancy under the Land Use Act in respect of the land and in accordance with existing state law.

116. General non-discrimination provisions

A holder of a licence or permit shall not discriminate against customers, classes of customers or their related undertakings in respect of access, tariffs, prices, conditions or standards of service, except for justifiable and identifiable differences regarding matters such as quantity, transmission distance, length of contract, load profile, interruptible supply or other distinguishing features approved by the Authority.

117. Assignment or transfer of licence or permit

- (1) A holder of a licence or permit shall not, without the prior written consent of the Authority, assign or transfer its licence or permit or any right or obligation arising from the licence or permit.
- (2) An application for assignment or transfer of a licence or permit shall be made to the Authority, which may require the applicant to publish a notice of the application in the form, manner and time prescribed by regulation under this Act.
- (3) The Authority shall, in the determination of whether a licence or permit is to be assigned or transferred, -
 - (a) follow the same procedure with appropriate modifications;
 - (b) apply the same rules and criteria;
 - (c) consider the same issues as if the party to whom the licence or permit is being assigned or transferred is applying for a new licence or new permit; and
 - (d) consider the representations made to it by third parties in respect of the application.
- (4) The Authority shall, subject to subsection (3), communicate in writing, its approval or refusal of an application for assignment or transfer of a licence or permit within the time prescribed by regulation under this Act.
- (5) Where the Authority does not approve or refuse an application and fails to communicate its decision to an applicant for the assignment or transfer of a licence or permit within the prescribed time, the application shall be deemed to be approved.
- (6) Where the Authority refuses the grant of an application for an assignment or a transfer of a licence or permit, it shall communicate to the applicant the reason for the refusal and shall give reasonable time within which further representation may be made by the applicant or by a third party in respect of the application.
- (7) Where the Authority grant consent to an assignment or transfer of a licence or permit, it shall notify the applicant in writing, subject to any condition it may consider appropriate.

118. Suspension and amendment of conditions in a licence or permit

- (1) The Authority may suspend or amend the conditions applicable to a licence or permit or include additional conditions subject to subsection (2).
- (2) The Authority shall not suspend or amend any condition applicable to a licence or permit or include additional conditions to a licence or permit unless it gives the holder-

- (a) a written notice of its intention and a draft copy of the proposed suspension or amendment; and
 - (b) an opportunity to make a written submission to the Authority within the time specified by regulation.
- (3) The procedure for the suspension or amendment of a condition in a licence or permit shall be as prescribed by the Authority in a regulation under this Act.
- (4) A holder of a licence or permit who is dissatisfied with the decision of the Authority to suspend or amend a condition in a licence or permit may apply to the Federal High Court against the decision.

119. Surrender of licence or permit

- (1) The holder of a licence or permit may, upon an application in the form, manner and meeting any condition prescribed by the Authority in a regulation made under this Act surrender the licence or permit, where-
- (a) the licenced or permitted activity is no longer required;
 - (b) the licenced or permitted activity is not economically justifiable;
 - (c) another qualified person is willing and able to assume the rights and obligations of the holder of the licence or permit in accordance with the requirements and objectives of this Act; and
 - (d) applicable, the holder of the licence or permit has complied with the requirements of the law in respect of relinquishment, decommissioning and abandonment of installations and reclamation of land.
- (2) A holder of the licence or permit who has commenced activities and has ongoing operations shall, except a shorter period is stipulated in the licence or permit, give the Authority a minimum of 12 months' notice in writing of its intention to cease its activities.
- (3) The form and procedure to be followed in surrendering a licence or permit under subsection (2) shall be as prescribed by regulation.

120. Grounds for the revocation of a licence or permit

- (1) Notwithstanding the provisions of Chapter 2 of this Act related to midstream and downstream petroleum operations, a licence or permit may be revoked, where-
- (a) the holder becomes insolvent, bankrupt, enters into an agreement or composition with its creditors or takes advantage of any enactment for the benefit of the debtors or goes into liquidation, except as part of a scheme for an arrangement or amalgamation;

- (b) upon the transformation or dissolution of the company or corporation, except it is for the purpose of amalgamation or reconstruction, provided that the prior written consent of the Authority has been obtained;
 - (c) a holder of a licence or permit fails to commence activity within the timeframe prescribed in the licence or permit;
 - (d) the holder of a licence or permit fails to comply with applicable laws and regulations on terms and conditions of its licence or permit;
 - (e) the holder interrupts midstream or downstream petroleum operations for a period of more than 180 consecutive days without justification as provided for in the licence or permit, the acknowledgement of an event of force majeure, shall be an acceptable justification for interruption;
 - (f) the holder assigns or transfers any interest in the licence or permit without obtaining the prior written consent of the Authority;
 - (g) the holder has acquired the licence or permit based on false representation or contrary to corrupt practices and money laundering laws;
 - (h) the holder has failed to comply with environmental obligations as required by law or the provisions of the licence or permit;
 - (i) the holder is owned wholly or in part, directly or indirectly or is controlled by a former or serving public official or member of the Government, who obtained his interest in the applicable licence or lease other than as permitted by applicable law; and
 - (j) the holder fails to abide by any expert determination, arbitration award or judgment arising from the dispute resolution provisions set forth in a licence or this Act.
- (2) Subsection (1) (i) shall apply to a former public official or member of Government only where the applicable interest was acquired while the public official was in office or was a member of the Government.

121. Notice of default prior to revocation

- (1) Prior to a decision by the Authority to revoke a licence or permit under section 120 of this Act, the Authority shall-
 - (a) serve a notice of default on the holder setting forth in reasonable detail the default of the holder; and
 - (b) give the holder 60 days within which to remedy the default.

- (2) Where the Authority is satisfied with the remedy of the holder under subsection (1) (b), the revocation process shall terminate.
- (3) Where, at the expiration of 60 days, the holder fails to remedy the default, the licence or permit shall be terminated.
- (4) A notice of default shall be-
 - (a) sent by the Authority to the last known address of the holder of licence or permit or its legal representative in Nigeria, or
 - (b) published in the Federal Government Gazette or on the website of the Authority, each of which shall constitute sufficient notice to the holder of licence or permit of the notice of default.
- (5) Revocation shall be without prejudice to any-
 - (a) liabilities which the holder may have incurred; or
 - (b) claim, which the Authority, the Government or any third party may make against the holder of licence or permit.
- (6) A revocation decision shall be published in the Federal Government Gazette and the Authority shall amend relevant registers maintained by it to reflect the revocation.

122. Tariff principles

- (1) The Authority shall, in exercising its powers of commercial regulations, be guided by the following principles in designing a pricing framework for transportation, distribution and processing petroleum tariffs-
 - (a) for transportation, distribution and processing of petroleum shall be on a cost-reflective basis;
 - (b) charged shall permit a reasonable return for licensees on their investments;
 - (c) shall not discriminate between customers with similar characteristics under section 116 of this Act; and
 - (d) shall be determined in US Dollars or other foreign currency as applicable with a view to attracting foreign investment to midstream and downstream petroleum operations, provided that payments of the tariffs may be made in the respective foreign currency or equivalent value of Naira at the open market rate published by the CBN as applicable under the regulations.

- (2) The tariff methodology for tariffs related to new gas transportation pipelines, gas distribution networks and facilities requiring a gas processing licence shall include, that-
- (a) tariffs shall be determined in US Dollars, but may be paid in Naira, where the applicable exchange rate shall be based on the Securities and Exchange Commission over the counter market rate or any successor rate;
 - (b) the capital costs may be recovered in equal instalments over a period as determined by the Authority;
 - (c) the after tax rate of return on equity shall be such that it attracts major investment and the rate of return shall apply during construction;
 - (d) where short pipelines connecting producers or consumers to a gas transport pipeline or gas transport pipeline network and in other justified cases, the Authority may approve that capital costs be based on 100% equity, otherwise a reasonable debt or equity ratio shall apply;
 - (e) where a debt or equity ratio applies under paragraph (d) of this subsection, the cost of any interest and financing charges shall be recovered;
 - (f) operating costs, including allocation for overhead and profit margin on operating costs, shall be recovered and the costs shall be adjusted for inflation;
 - (g) line losses and gas energy use shall be taken into account;
 - (h) any applicable tax, levy and duty shall be recovered;
 - (i) where capital costs have been fully recovered, the tariff shall no longer include the items under paragraphs (b), (c) and (d); and
 - (j) tariffs shall be based on the estimated throughput as estimated by the Authority, notwithstanding the capacity of the gas transportation pipeline, gas distribution network or processing plant.
- (3) The Authority may by regulation modify or provide further detail on the provisions of subsection (2) and establish more favorable tariffs for credit worthy shippers willing to commit to long term ship-or-pay agreements facilitating the financing of the respective pipelines or plants.
- (4) The Authority may approve negotiated tariffs where one or more wholesale customers connect with a pipeline to a transportation network or transportation pipeline or in other cases where justified in the opinion of the Authority.

123. Tariff methodology

- (1) Tariffs charged by licensees for the use of any facility or infrastructure licenced by the Authority for use in midstream and downstream petroleum operations shall be set according to one or more tariff methodologies adopted by the Authority for a particular set of licences, in conformity with the applicable fiscal regime, provided that the tariff methodologies shall-
 - (a) allow an operator to recover reasonable cost incurred, benchmarked against industry best practice and a reasonable return on the capital invested in the business;
 - (b) ensure the efficiency of the business;
 - (c) ensure the continued improvement of the quality of services;
 - (d) avoid discrimination between customers with similar characteristics, such as similar size or similar consumption profile under section 116 of this Act;
 - (e) in case of distribution licences, ensure efficient charges relating to petroleum product or natural gas supply covering Acting, metering and other services;
 - (f) avoid economic distortions and ensure a competitive market for the sale and distribution of petroleum products and natural gas in Nigeria; and
 - (g) avoid cross-subsidies among different categories of consumers.
- (2) Tariffs may differentiate between credit worthy shippers willing to make long term ship-or-pay agreements facilitating the financing of the pipeline or plant and other shippers or users.
- (3) The Authority shall, prior to establishing a tariff methodology, initiate and conduct a stakeholders' consultation in the manner specified in subsection (5) to consult applicants, operators, consumers, prospective customers, consumers associations, associations of prospective customers and any other persons with interest in the subject matter of the proposed tariff methodology.
- (4) The Authority may, in establishing a tariff methodology, take into consideration the submissions of the stakeholders' consultation referred to in subsection (3).
- (5) Prior to holding a stakeholders' consultation referred to in subsection (3), the Authority shall publish in at least two national newspapers with wide coverage and on its website, notice of-
 - (a) the stakeholders' consultation;
 - (b) its invitation to licensees and stakeholders to participate in the stakeholders' consultation;
 - (c) the venue and period during which the stakeholders' consultation is to be held;

- (d) the nature of the matter to which the stakeholders' consultation relates;
 - (e) the matters upon which the Authority would require submissions;
 - (f) the form in which licensees and stakeholders are to make submissions to the Authority on the subject matter of the stakeholders' consultation;
 - (g) the period of notice for the commencement of the stakeholders' consultation, which shall not be less than 21 days; and
 - (h) the address or addresses to which the submissions may be sent.
- (6) Notwithstanding the requirements under subsection (3), the Authority may, due to the exigency of the circumstances, establish a tariff methodology without conducting a stakeholders' consultation, where it considers it necessary to do so.
- (7) A tariff methodology made under subsection (6) shall be valid for six months with effect from its commencement date, except it is confirmed following a stakeholders' consultation conducted in accordance with subsections (4) and (5).
- (8) The Authority shall fix a date for which the determined tariff methodology shall come into effect and shall cause the notice of the commencement date to be published in at least two national newspapers with wide coverage and its website.
- (9) Where the Authority considers it necessary that an existing tariff methodology or tariff should be amended, the Authority shall conduct a stakeholders' consultation on the proposed amendment in accordance with subsections (4) and (5).
- (10) A person under obligation to set tariffs shall be bound by operative tariff methodology adopted through the method prescribed in this section.
- (11) A holder of a licence engaged in the sale of petroleum products to retail customers or who is subject to third party access or open access obligations under this Act, shall display at its office a current copy of the tariffs applicable to the services provided by the holder.
- (12) A holder of a licence shall not pass the costs of any fine or penalty incurred under this Act or any other law to a consumer.

124. Approval and publication of charging structures

- (1) A licensee subject to tariff regulation by the authority shall-
- (a) propose tariffs for the approval of the Authority prior to the application of the charges;
 - (b) impose tariffs in accordance with the approval referred to under paragraph (a); and

- (c) publish the tariffs as required by the Authority in a manner that ensures that the customers of the licensees are able to identify and calculate the charges for which they will become liable.
- (2) The Authority shall, within 24 months after the effective date, review, confirm or modify all applicable tariffs including for licences under sections 125 (6) and 174 (6) of this Act.

PART IV—ADMINISTRATION OF MIDSTREAM AND DOWNSTREAM
GAS OPERATIONS

125. Activities requiring a licence for midstream and downstream gas operations

- (1) Except in accordance with an appropriate licence issued by the Authority, a person shall not undertake the following activities with respect to midstream and downstream gas operations-
 - (a) establish, construct or operate a facility for the processing of natural gas;
 - (b) establish, construct or operate a facility for the storage of natural gas;
 - (c) establish, construct or operate a gas transportation pipeline;
 - (d) engage in bulk transportation of natural gas by rail, barge or other means of transportation;
 - (e) operate a gas transportation network;
 - (f) establish, construct or operate a terminal, jetty, or other facility for the export or importation of natural gas;
 - (g) engage in wholesale gas supply; or
 - (h) engage in the construction or operation of petrochemical or fertiliser plants.
- (2) Except in accordance with an appropriate licence issued by the Authority, a person shall not undertake the following activities with respect to downstream gas operations-
 - (a) retail trading, distribution or supplies of natural gas;
 - (b) establishment, construction or operation of a gas distribution network; or
 - (c) establishment, construction or operation of a facility for the supply or trading of natural gas.

- (3) The Authority may, by regulation, prescribe additional activities to be undertaken only on the basis of a licence or permit and shall have power to issue licences or permits for the activities in accordance with this Act.
- (4) Where a person engages in any of the activities set out in subsection (1), (2) or (3) without a licence or permit, the Authority shall-
 - (a) seal the premises where the activity is undertaken;
 - (b) seize the facilities by which the activities were undertaken;
 - (c) confiscate and dispose of equipment or materials employed by the person in the activity in a manner prescribed by regulations under this Act;
 - (d) impose penalties as prescribed by regulations under this Act; or
 - (e) impose any combination of the provisions under paragraphs (a), (b), (c) and (d).
- (5) Notwithstanding any provision of this Act, a person who engages in any of the activities set out in subsection (1), (2) or (3) without a licence or permit, commits an offence and is liable to imprisonment for a term of-
 - (a) one year or to a fine prescribed by regulation, in the case of an activity requiring a licence; or
 - (b) six months or to a fine prescribed by regulation, in the case of an activity requiring a permit.
- (6) A holder of a subsisting lease, licence or permit who is engaged in activities in midstream or downstream gas operations prior to the effective date shall, within 18 months from the effective date, apply to the Authority for, and the Authority may issue the appropriate licence or permit, where applicable.
- (7) The provisions of subsections (4) and (5) shall not apply to any person under subsection (6) until the Authority has considered the application and given a decision.
- (8) Where any person, in applying for a licence or permit, knowingly makes a false or misleading statement, the Authority may –
 - (a) suspend or revoke the licence or permit; or
 - (b) impose a fine on the licensee or permit holder on the basis of the false or misleading information.

126. Special regulations for midstream and downstream gas operation

In addition to any matter provided under section 113 of this Act, the Authority may issue regulations with respect to midstream and downstream gas operations, which shall include-

- (a) the establishment and operation of a wholesale natural gas market scheme to ensure continuity of supply of natural gas to customers, which will apply to the owners and operators of gas transportation pipelines, shippers of natural gas, holders of natural gas storage and distribution licences and gas retailers; and
- (b) matters ancillary to or consequential on the activities set out in paragraph (a).

127. Rights of way relating to midstream and downstream gas operation

Subject to applicable law and the terms and conditions prescribed by the Authority, a licensee or permit holder is entitled to rights of way for the laying, operation and maintenance of pipelines, communication lines and other similar lines through or across the areas the licensee or permit holder may require for carrying on midstream or downstream gas operations under the licence or permit.

128. Surface rights reserved for the Authority relating to midstream and downstream gas operations

The Authority may for the purpose of efficiency, preserve in accordance with applicable law, rights of way, easements or other rights over any surface or seabed areas subject to an existing licence or permit, which may be necessary for the laying, operation and maintenance of transportation pipelines, communication lines, power lines and other similar lines and any right of way or other rights reserved shall continue for the benefit of any entity to whom the Authority may subsequently grant the same for a licence or permit.

129. Grant of a gas processing licence

- (1) Subject to sections 111 and 125 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a gas processing licence, which shall permit the person to install and operate the following facilities, on its own account or on the basis of open access for customers as stipulated in the licence, -
 - (a) gas conditioning plants, to condition natural gas removing CO₂, H₂S or other impurities;
 - (b) gas processing plants, to produce ethane, propane, butane, other natural gas liquids and marketable natural gas;
 - (c) gas to liquids plants;
 - (d) liquefied natural gas (LNG) plants;
 - (e) ethane extraction plants; and
 - (f) other plants, which in the opinion of the Authority, require a gas processing licence.

- (2) The Authority shall, in considering an application for a gas processing licence, take into account the economic case for the specific facility as provided under subsection (1), including the potential demand for its use.

130. General duties of a holder of a gas processing licence

The holder of a gas processing licence shall undertake the activities contemplated by the licence in a manner that complies with the following general obligations-

- (a) to construct, operate and maintain its gas processing equipment and facilities in an economical, safe, reliable and environmentally sustainable manner;
- (b) shut down its facilities in emergencies and in order to carry out maintenance or in accordance with curtailment directives issued by the Authority;
- (c) manage its facilities as a responsible and prudent operator;
- (d) avoid any act or omission that may affect the compatibility of the processing facility with any natural gas facility or network that is likely to prejudice the public interest or the integrity of network operations;
- (e) operate the facilities in a manner that results in output of products with specifications as determined by the Authority;
- (f) to operate its facilities subject to open access commitments as stipulated in the licence or where the licence is issued for operations on its own account, provide third party access in an equitable manner;
- (g) treat all customers in a non-discriminatory manner under section 116 of this Act, where the licence is issued on an open access basis; and
- (h) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

131. Conditions applicable to a gas processing licence

A gas processing licence shall, in addition to the conditions that may be imposed by the Authority under section 114 of this Act, be deemed to be granted subject to the condition that-

- (a) the holder shall not process natural gas on its own account, where the licence is issued on an open access basis;
- (b) a licensee operating on its own account, being an affiliate of a lessee, may own, or the affiliate may own, the natural gas in a gas conditioning plant or gas processing plant for

the purpose of conditioning or processing natural gas from the fields under lease with the affiliate, subject to such third party access provisions as may be included in the licence;

- (c) a licensee operating on its own account, who is also a wholesale customer or a holder of a gas distributor licence, may own the natural gas in a gas processing plant, ethane extraction plant or other plant requiring a gas processing licence, where the principal user of the natural gas is the wholesale customer or gas distributor, subject to any third party access provisions as may be included in the licence;
- (d) the holder shall conduct its licenced activities safely and reliably in compliance with any law in force and any prescribed health and safety regulations, standards and operating procedures made under this or any other Act;
- (e) the holder shall have regard to the effect of its licenced activities on the environment and comply with the requirements for environmental protection, management and restoration under this Act and any law in force; and
- (f) the holder shall mark, maintain and secure the boundaries of its facilities and associated infrastructure constructed under the terms of its licence and any law in force.

132. Grant of bulk gas processing licence

- (1) Subject to sections 111 and 125 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a bulk gas storage licence authorising the holder to undertake the bulk storage of natural gas either for its own account or on behalf of customers as stipulated in the licence.
- (2) The Authority shall, in considering an application for a bulk gas storage licence, take into account the economic case for a bulk gas storage facility, including the potential demand for its use.

133. General duties of a bulk gas storage licence

The holder of a bulk gas storage licence shall undertake the activities contemplated by the licence in a manner that complies with the following general obligations-

- (a) establish and make available to the public at its offices, the-
 - (i) procedure and terms for obtaining third party access or throughput services on an open access basis, and
 - (ii) method of response to the request for its services;

- (b) construct, operate and maintain its facilities in a safe, economical, reliable, and environmentally sustainable manner taking into account any strategic plans formulated by the Authority;
- (c) shut down its facilities in emergencies and in order to carry out maintenance or in response to curtailment directives issued by the Authority;
- (d) where the licensee operates for its own account, grant to third parties the right to use or have access to capacity within its facilities for the purpose of ensuring competitive gas supply;
- (e) consult with and obtain from the Authority written permission prior to any modification of technical and operational rule of practice concerning the operation of its facilities;
- (f) conduct its licenced activities in a non-discriminatory manner under section 116 of this Act, where the licence is issued on an open access basis;
- (g) manage its facilities as a reasonable and prudent operator; and
- (h) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

134. Conditions applicable to a bulk gas storage licence

In addition to conditions the Authority may impose under section 114 of this Act, a bulk gas storage licence shall be deemed to be granted subject to the conditions that-

- (a) a licensee operating on its own account, being an affiliate of a lessee, may own, or the affiliate may own, the natural gas in the bulk storage facilities for the purpose of storing natural gas from the fields of the affiliate, subject to such third party access provisions as may be included in the licence;
- (b) a licensee operating on its own account, who is also a wholesale customer or holder of a gas distributor licence, may own the natural gas in the bulk storage facilities, where the principal user of the natural gas is the wholesale customer or gas distributor, subject to any third party access provisions as may be included in the licence;
- (c) the holder conduct its licenced activities safely and reliably in compliance with any law in force and prescribed health and safety regulations issued under this or any other Act;
- (d) the holder have regard to the effect of its licenced activities on the environment and comply with the requirements for environmental protection, management, and restoration under this Act and any law in force; and

- (e) the holder mark, maintain and secure the boundaries of its facilities and associated infrastructure constructed under the terms of its licence and any law in force.

135. Grant of gas transportation pipeline

- (1) Subject to sections 111 and 125 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a gas transportation pipeline licence with the exclusive right to own, construct, operate and maintain a gas transportation pipeline within a route as defined in the licence for its own account with third party access provisions or as common carrier as stipulated in the licence.
- (2) The Authority shall, in considering an application for a gas transportation pipeline licence, take into account the economic case for a gas transportation pipeline, including the potential demand for its use.

136. General duties of a transportation pipeline owner

The holder of a transportation pipeline licence shall undertake the activities contemplated by the licence in a manner that complies with the following general obligations-

- (a) establish and make available to the public at its offices, the-
 - (i) procedure for obtaining and terminating transmission and interconnection services for natural gas, on a third party access or open access basis as determined in the licence and publish the tariffs established by the Authority, and
 - (ii) method of response to the request for its service;
- (b) construct, operate and maintain its gas transportation pipeline in a safe, economical, and reliable manner taking into account any strategic plans formulated by the Authority;
- (c) meet on a reasonable endeavours basis requests for transportation above contractual volumes;
- (d) shut down its gas transportation pipeline in emergencies and in order to carry out maintenance or in response to curtailment directives issued by the Authority;
- (e) provide access on a non-discriminatory basis under section 116 of this Act, where the licence is granted on a common carrier basis;
- (f) consult with and obtain from the Authority written permission prior to any modification of technical and operational rule of practice concerning the operation of its pipeline;
- (g) manage its gas transportation pipeline as a reasonable and prudent operator;
- (h) where the pipeline is operated on a common carrier basis, ensure development and operation of terms for access to the gas transportation pipeline in conjunction with the

natural gas shipping community and where applicable comply with the relevant network code;

- (i) where the pipeline is operated for its own account, operate its facilities subject to third party access obligations under this Act and regulations prescribed by the Authority; and
- (j) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

137. Conditions applicable to a gas transportation pipeline licence

A gas transportation pipeline licence shall, in addition to the conditions that may be imposed by the Authority under section 114 of this Act, be deemed to be granted subject to the condition that-

- (a) the holder shall not supply natural gas to customers on its own account where the licence is granted on a common carrier basis;
- (b) a licensee operating on its own account, who is an affiliate of a lessee, may own, or the affiliate may own, the natural gas in a gas transportation pipeline, for the purpose of-
 - (i) connecting marketable natural gas produced in a field under a lease with an affiliate to another gas transportation pipeline or gas transportation network, and
 - (ii) transporting natural gas to a plant for conditioning or processing natural gas from fields under lease with an affiliate, subject to third party access provisions as may be included in the licence;
- (c) a licensee operating on its own account, who is also a wholesale customer or holder of a gas distributor licence, may own the natural gas in a gas transportation pipeline, where it is the principal user of the natural gas, subject to any third party access provisions as may be included in the licence;
- (d) a licensee operating on its own account, who is also a holder of a wholesale gas supply licence, may own the natural gas in a gas transportation pipeline, for the purpose of connecting a lessee or wholesale customer to or from a gas transportation network or gas transportation pipeline, subject to such third party access provisions as may be included in the licence;
- (e) the holder shall conduct its licenced activities safely and reliably in compliance with any law in force and prescribed health and safety regulations issued under this or any other Act;
- (f) the holder shall have regard to the effect of its licenced activities on the environment and comply with the requirements of environmental protection, management and restoration under this Act and any law in force;

- (g) the holder shall mark, maintain and secure the boundaries of the pipelines and associated infrastructure constructed under the terms of its licence and any law in force;
- (h) a pipeline transporting un-processed gas to a gas processing plant or gas conditioning plant shall require a gas transportation pipeline licence and the Commission shall-
 - (i) determine and advise the Authority on the characteristics of the gas to be transported, and
 - (ii) cooperate with the Authority in determining possible third party access to the pipeline; and
- (i) the gas transportation pipeline may, with the approval of the Authority, be in whole or in part, a low-pressure pipeline at the request of the licensee.

138. Grant of gas transportation network operator licence

- (1) Subject to sections 111 and 125 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a gas transportation network operator licence authorising the conduct of activities specified in the licence, which shall include-
 - (a) conveyance of natural gas through the gas transportation network on an open access basis;
 - (b) balancing the inputs and off takes from the gas transportation network;
 - (c) providing access to shippers based on the gas network code under section 160 of this Act to the gas transportation network; and
 - (d) charging for the use of the gas transportation network based on tariffs established by the Authority.
- (2) The Authority shall grant only one gas transportation network operator licence within a geographically defined area to a single network operator, provided that the Authority may at its discretion, issue licences to other parties for the operation of isolated or dedicated gas transportation pipelines and for connecting to the gas transportation network.

139. General duties of a gas transportation network operator

The gas transportation network operator shall exercise the rights and obligations imposed on it in a manner that complies with the following general obligations-

- (a) establish and make available to the public at its offices, the-

- (i) procedure, terms and conditions for obtaining and terminating access and interconnection services to the transportation network, and
 - (ii) method of response to the request for its service;
- (b) operate an efficient and economical gas transportation network for the safe and reliable conveyance of natural gas in such a manner that is designed to meet all reasonable demands for natural gas transportation;
 - (c) operate a nomination and balancing mechanism and an equitable curtailment of natural gas transportation whenever technical or operational expediencies requires;
 - (d) consult with and obtain from the Authority written permission prior to any modification of technical and operational rule of practice concerning the operation of its gas transportation network;
 - (e) ensure the development and operation of the network code and terms for access into the gas transportation network in collaboration with the Authority, natural gas shippers, all licensees and permit holders operating essential infrastructure;
 - (f) ensure equitable and transparent access to the transportation network;
 - (g) manage the gas transportation network as a reasonable and prudent operator;
 - (h) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition; and
 - (i) enter into agreements with gas transportation pipeline owners, gas distributors and wholesale customers for connection to and operation of the gas transportation network.

140. Powers of a transportation network operator

Subject to this Act, the Authority may grant the following special powers or authority to a gas transportation network operator to facilitate the conduct of its licenced activities

- (a) the power to request for and obtain from the relevant shippers, information required to operate the nominations and balancing mechanism, to operate the network or to facilitate competition;
- (b) the right to recover on the basis of an invoice, expenses reasonably incurred in undertaking its licenced activities, subject to any restrictions or conditions imposed by the Authority with respect to both the level and structure of its charges; and

- (c) to purchase natural gas for its own operations for purposes such as testing and commissioning of facilities, compression and line fill, but shall not supply natural gas to customers on its own account.

141. Conditions applicable to a gas transportation network operator licence

- (1) In addition to the conditions as may be imposed by the Authority under section 114 of this Act, a transportation network operator licence may include an obligation to develop market rules in accordance with this Act.
- (2) A gas transportation network operator may be an owner of any or all of a gas transportation pipelines in a gas transportation network.
- (3) Where a third party is the owner of a gas transportation pipeline in a gas transportation network, the owner shall be paid the tariffs determined by the Authority for non-operating owners of the pipelines by the gas transportation network operator.
- (4) A gas transportation network operator shall not misuse its monopoly position in the geographical area to charge franchise or other access charges for providing access to the gas transport network, other than the charges specifically permitted under this Act, and regulations made under this Act.

142. Grant of a wholesale gas supply licence

- (1) Subject to sections 111 and 125 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a wholesale gas supply licence to a qualified person.
- (2) A company who is a lessee producing natural gas is a qualified person for the purpose of subsection (1) and shall be entitled to apply for and be issued with a wholesale gas supply licence by the Authority.
- (3) A wholesale gas supply licence authorises the supplier to-
 - (a) purchase natural gas directly from any lessee or third party; and
 - (b) sell and deliver wholesale gas to wholesale customers and gas distributors at any location in Nigeria.

143. General duties of a wholesale gas supplier

A wholesale gas supplier shall undertake the activities contemplated by the wholesale gas supply licence in a manner that complies with the following general obligations, to-

- (a) provide a reliable supply of wholesale gas to wholesale customers who have entered into a gas purchase and sale agreement with the supplier; and

- (b) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

144. Rights of a wholesale gas supplier

Subject to the provisions of this Act, the Authority may grant the following specific powers or authority to a wholesale gas supplier to facilitate the conduct of its licenced activities, the right to-

- (a) terminate wholesale gas supply to a wholesale customer in the event of non-payment, following a notice period;
- (b) recover from a customer, on the basis of an invoice and subject to any conditions imposed by the Authority on the level and structure of a licensee's charges and costs reasonably incurred in the supply of wholesale gas, including the cost of natural gas incurred by the supplier, the cost of transportation of natural gas; and
- (c) enter a premises, in accordance with a metering code issued by the Authority, for the purpose of reading the meters, testing and maintaining metering equipment, disconnecting customers and to remove the meters.

145. Conditions applicable to a wholesale gas supply

- (1) In addition to conditions the Authority may impose under section 114 of this Act, a wholesale gas supply licence shall be deemed to be granted subject to the supplier-
 - (a) requesting security or applying a credit scoring methodology approved by the Authority in deciding whether supply is economical;
 - (b) supplying marketable natural gas to a wholesale customer with whom the supplier has entered into a gas purchase and sale agreement and who in order to connect to a gas transportation network or gas transportation pipeline is willing and able to-
 - (i) pay for the connection,
 - (ii) construct its own gas transportation pipeline under section 137 (c) of this Act, or
 - (iii) pay the respective tariff to the supplier for the gas transportation pipeline owned by the supplier, subject to safety and network capacity constraints;
 - (c) conducting its licenced activities safely and reliably in compliance with any law in force and prescribed health and safety regulations issued under this or any other Act; and
 - (d) complying with customer protection measures in accordance with sections 164, 165 and 166 of this Act.

- (2) A wholesale gas supplier shall undertake its licenced activities in a manner that complies with the conditions of the licence.

146. Grant of retail gas supply licence

- (1) Subject to sections 111 and 125 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a retail gas supply licence authorising the holder to-
- (a) sell or retail compressed or liquefied marketable natural gas to customers based on being a wholesale customer or third party access to gas distribution systems of gas distributors; and
 - (b) establish, construct and operate facilities to deliver compressed natural gas and small scale facilities for LNG, not requiring a gas processing licence, for transportation by truck, railcar or marine vessel to customers in compressed or liquefied form, including customers using LNG as marine bunker fuel.
- (2) A company who is a lessee producing natural gas is a qualified person for the purpose of subsection (1) and shall be entitled to apply for and be issued with a retail gas supply licence by the Authority
- (3) A retail gas supply licence authorises the gas retailer, to-
- (a) purchase marketable natural gas directly from a lessee, wholesale gas supplier or third party on a free market basis; and
 - (b) sell and deliver compressed or LNG to customers at any location in Nigeria on a free market basis.

147. General duties of a gas distributor

In addition to conditions the Authority may impose under section 114 of this Act or that may be prescribed by regulation, a retail gas supply licence shall be deemed to be granted subject to the duty of the holder to-

- (a) develop and maintain a safe, efficient, reliable and economical service for the retailing of marketable natural gas;
- (b) carry on its business in a manner that shall promote competition and avoid monopoly in the natural gas market in Nigeria;
- (c) construct, operate and maintain its gas compression and liquefaction facilities in a safe, economical, and reliable manner taking into account any strategic plans formulated by the Authority;

- (d) shut down its gas compression and liquefaction facilities in emergencies in order to carry out maintenance or respond to curtailment directives issued by the Authority;
- (e) conduct its activities in a safe and reliable standard in compliance with prescribed environmental, health and safety-related regulations issued under this or any other Act;
- (f) publish the prices to be charged and to be paid by a person to whom the gas retailer sells natural gas in a manner to ensure adequate publicity unless the Authority direct otherwise; and
- (g) comply with customer protection measures set out in sections 164, 165 and 166 of this Act.

148. Grant of gas distribution licence

- (1) Subject to sections 111 and 125 of this Act or regulations made under this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person gas distribution licence with rights to establish, construct, and operate a gas distribution system and to distribute and sell its natural gas without discrimination to consumers in a local distribution zone.
- (2) Notwithstanding the rights of a gas retailer under this Act, the holder of a gas distribution licence shall be entitled to sell natural gas to customers that are not wholesale customers.
- (3) The Authority shall, in considering an application for a gas distribution licence, take into account the economic case for the licence, including the potential demand for its use.
- (4) The geographical limit of a local distribution zone shall be defined in the relevant gas distribution licence.
- (5) The rights and duties under a gas distribution licence shall be exclusive to the gas distributor for the validity period of the distribution licence.
- (6) A gas distribution licence may-
 - (a) include provisions for providing third party access to the gas distribution network to a gas retailer or gas distributor on its own initiative; and
 - (b) permit access to a gas retailer to the gas distribution network under terms and conditions agreed to by the parties.
- (7) Subject to subsection (6), the gas distributor shall own the marketable natural gas in the gas distribution network.

149. General duties of a gas distributor

A gas distributor shall undertake the activities contemplated by the gas distribution licence in a manner that complies with the following general obligations, to-

- (a) develop, operate and maintain an economical gas distribution network for the safe and reliable conveyance of natural gas;
- (b) ensure a reliable and efficient distribution of natural gas to customers on request, provided that it is economical to do so;
- (c) distribute and sell natural gas on request to a customer who is willing and able to pay for connection to the gas distribution network, subject to safety and network capacity constraints;
- (d) conduct licenced activities safely and reliably in compliance with any law in force and any health and safety-related regulations issued by the Authority under this or any other Act;
- (e) connect all customers within its local distribution zone in accordance with regulations if economically practicable to do so;
- (f) offer and publish terms and conditions of access to its gas distribution network as required and publish gas prices applicable to different classes of customers, which have been approved by the Authority;
- (g) comply with customer protection measures set out in sections 164, 165 and 166 of this Act;
- (h) prepare a distribution development plan, within one year after the effective date or after having been granted the licence, for connecting customers within its local distribution zone and any amendments as a result of economic or social developments in the zone for the consideration and approval of the Authority; and
- (i) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

150. Rights of gas distributor

Subject to the provisions of this Act, the Authority may, in order to facilitate the conduct of its licenced activities, grant the gas distributor the right to-

- (a) enter a premises for the purpose of reading the meters, testing and maintaining metering equipment, disconnecting customers and to remove its meters; and

- (b) recover, on the basis of an invoice, costs reasonably incurred in the provision of appropriate infrastructure, subject to any conditions imposed by the Authority to both the level and structure of a distributor's charge, provided that reasonably incurred costs shall include any amount paid to the Authority as a licence fee.

151. Conditions applicable to a gas distribution licence

In addition to conditions the Authority may impose under section 114 of this Act or that may be prescribed by regulation, a distribution licence shall be deemed to be granted subject to the distributor-

- (a) conducting its licenced activities in a safe and reliable standard in compliance with prescribed management, health and safety related regulations issued under this or any other Act;
- (b) having regard to the effect of its licenced activities on the environment and complying with the requirements for environmental protection, management, and restoration under this Act and any law in force; and
- (c) marking, maintaining and securing the boundaries of the distribution pipelines constructed or other distribution infrastructure as prescribed.

152. Arrangements of gas distribution

A gas distributor shall consult stakeholders on the proposed distribution development plan and any amendments within its local distribution zone and consider all representations received.

153. Domestic as aggregation licence

- (1) Subject to sections 111 and 125 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a domestic gas aggregation licence.
- (2) The duration of the domestic gas aggregation licence shall be for a period of two years effective from the date of the grant of the licence.
- (3) The domestic gas aggregation licence may be renewed by the Authority for further period of two years in each instance until the attainment of liquidity in the domestic gas market pursuant to the criteria of section 167 of this Act, whereupon gas aggregation shall cease and the domestic gas aggregation licence shall be terminated by the Authority.
- (4) The board of domestic gas aggregator shall determine the fees for the services of the domestic gas aggregator and the fees shall be paid by the producer clients and customer clients in order to ensure self-financing of the domestic gas aggregator.

154. Functions of domestic gas aggregators

The domestic gas aggregator shall-

- (a) support the implementation of the domestic gas delivery obligation;
- (b) implement a natural gas management model, through which the demand and supply of natural gas for use in the strategic sectors shall be monitored;
- (c) operate a nomination and balancing mechanism for equitable curtailment of natural gas deliveries in cooperation with the Authority, whenever demand and supply expediencies require;
- (d) ensure transparency of dealing between natural gas suppliers and wholesale customers of the strategic sectors;
- (e) conduct its operations in a business-like and transparent manner and shall not engage in any anti-competitive behaviour and practices;
- (f) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition;
- (g) establish an escrow account into which customer clients shall contribute their payments for the marketable natural gas received and from which the domestic gas aggregator shall pay the producer clients for their supplies of natural gas under this Act; and
- (h) do other things as are necessary or incidental to the carrying out of its functions and duties under this Act.

155. Establishment of the aggregator

- (1) The domestic gas aggregator shall be a not-for-profit company limited by guarantee established under the Companies and Allied Matters Act.
- (2) The company under subsection (1) shall not be a company that is controlled by licensees or lessees of upstream petroleum operations or by wholesale customers or is an affiliate of such entities, provided that ownership of the company may be by a combination of licensees or lessees, wholesale customers and other interested parties, such as licensees of gas transportation pipelines and gas transportation networks.

156. Gas purchase orders

The domestic gas aggregator shall issue a gas purchase order to a producer client where a customer client requires a specific volume of marketable natural gas, which is included in the domestic gas demand requirement under section 173 of this Act, provided, however, that where the producer client and customer client have entered into a gas purchase and sale agreement, the domestic gas delivery obligation shall be dealt with pursuant to such agreement which may continue to use the escrow account mechanism

as provided for under section 154 (g) of this Act and where such agreement is concluded under section 110 (2) of this Act, there shall be no further involvement of the aggregator

157. Price conditions for gas purchase orders

The gas purchase order under section 156 of this Act and the escrow mechanism under 154 (g) of this Act shall be based on the prices for marketable natural gas established by the Authority under section 167 of this Act.

158. Wholesale customer

(1) The Authority shall, following consultations with interested stakeholders, issue regulations-

(a) defining the class or classes of customers that shall constitute eligible wholesale customers under this Act, and

(b) specifying the qualifying criteria for the classification:

Provided that the regulations may be amended from time to time to facilitate the introduction of competition in supply and any amendment of the regulations resulting in a change of the class of customers shall not affect the rights and obligations of parties under natural gas supply contracts entered into prior to such amendment.

(2) Wholesale customers shall be entitled to secure marketable natural gas or raw gas from any wholesale gas supplier or lessee, subject to section 173 (3) of this Act.

159. Trading and settlement of wholesale

(1) The Authority shall develop arrangements for the safe and efficient trading of wholesale gas, where it determines that there is need for formal arrangements for the trading of wholesale gas.

(2) The Authority shall, where required, make regulations under subsection (1) for the trading and settlement of wholesale gas in consultation with industry participants and interested stakeholders.

160. Gas network code

(1) The operation of a gas transportation network shall be in accordance with the existing network code issued by the Government.

(2) The Authority may in consultation with stakeholders in midstream and downstream gas operations modify the network code or create other network codes for common carrier operations.

(3) The Authority shall make copies of the gas network code available to interested parties upon payment of prescribed fees.

161. Access related to midstream and downstream gas operation

- (1) A person shall be permitted access to an open access gas transportation pipeline or a gas transportation network for the purpose of having marketable natural gas transported to points of consumption subject to compliance with the prescribed terms and conditions for access stated in the gas network code.
- (2) The gas network code shall set out standard terms and conditions for connection to, interconnection with access and use of the gas transportation network.
- (3) Where a gas transportation pipeline is isolated from the main gas transportation network, the Authority shall develop separate terms of access for the isolated gas transportation pipeline.
- (4) The Authority may develop special terms for third party access to a gas distribution network.

162. Conditions for the provision of open access in relation to gas operation

- (1) Where open access applies, open access to the gas transportation pipeline or gas transportation network shall be-
 - (a) provided on a non-discriminatory basis between system users with similar characteristics under section 116 of this Act;
 - (b) provided in respect of any available capacity, where the capacity is not subject to a previous contractual commitment;
 - (c) provided in accordance with and governed by the terms and conditions of the network code approved by the Authority, where applicable;
 - (d) provided on the condition that the applicant for access is or becomes a party to and undertakes to comply with the applicable network code ; and
 - (e) subject to the pricing principles set out in section 170 of this Act.
- (2) Connection agreements may be entered into between-
 - (a) gas transportation pipeline owners and gas transportation network operator;
 - (b) a gas distributor and the gas transportation network operator, where a gas distribution network connects to the main transportation network; or
 - (c) a supplier and a transportation pipeline owner or transportation network operator.

163. Dispute in relation to access

The Authority may mediate in disputes in respect of third party access.

164. Customer protection

- (1) The Authority may, to protect the interests of customers, issue regulations requiring suppliers, gas distributors and petroleum product distributors to-
 - (a) publish their terms of supply or distribution including tariffs, other than for negotiated tariffs under section 122 (4) of this Act;
 - (b) establish or to facilitate the establishment of a forum at which customers are able to express their views and raise concerns;
 - (c) formulate and adhere to standards of performance as are, in its opinion, necessary to ensure the safety, reliability and quality of supply and distribution services to customers and set penalties, pursuant to regulations, for failure to comply;
 - (d) prepare and submit reports to the Authority, at least on an annual basis, indicating their performance levels and status of their operations in respect of licenced activities at such times as the Authority may by regulation or in their respective licences prescribe; and
 - (e) develop and adhere to customer service codes, setting out the practices and procedures to be followed in the conduct of specified licenced activities, which may include-
 - (i) the installation, testing, maintenance and reading of meters,
 - (ii) fault repairs and response to customer emergencies,
 - (iii) the connection and disconnection of customers,
 - (iv) responding to customer complaints and complaint resolution,
 - (v) Billing and invoicing,
 - (vi) the extension of payment and credit facilities,
 - (vii) the provision of information to customers and the use and protection of customer information, and
 - (viii) the establishment of special services for economically or socially disadvantaged customers.
- (2) The customer service codes shall be approved by the Authority prior to publication and may be reviewed at intervals as may be considered necessary by the Authority.
- (3) The customer service codes shall be made available to all customers upon request and published on the website of the Authority.

- (4) The Authority shall notify or by regulation require licensees to notify customers of the customer service codes that shall be adhered to by licensees.
- (5) The Authority shall, in developing customer protection regulations,-
 - (a) consult with suppliers, gas distributors, petroleum product distributors and interested stakeholders; and
 - (b) take into account existing procedures, practices and standards issued by the Federal Competition and Consumer Protection Commission.

165. Provision of service to customer

The Authority shall, at its discretion and at such time or times as it deems appropriate, designate distributors of last resort and suppliers of last resort to provide services to customers-

- (a) where an existing gas distributor for a local distribution zone, a petroleum product distributor or a supplier becomes insolvent, is unable to provide licenced services or has had its licence suspended or revoked,
 - (b) where the gas distributor for a local distribution zone or supplier refuses or fails to fulfil the terms of its licence to distribute or supply natural gas or petroleum product to customers, and
 - (c) in such other circumstances as the Authority may deem appropriate:
- Provided that, in each case, any reasonable additional costs associated with the obligation to act as distributor or supplier of last resort shall be recoverable through appropriate charging arrangements agreed with the Authority.

166. Where the designation of a supplier or distributor of last resort requires the transfer of customers from one licensee to another, the Authority shall prepare, or require the applicable supplier or distributor of last resort to prepare-

- (a) procedures to secure the effective transfer of customers; and
- (b) a statement of any costs reasonably incurred in undertaking the transfer, which if approved by the Authority, shall be recoverable through regulated charges.

167. Natural gas price for strategic sectors and gas distributors

- (1) The Authority shall, in accordance with this section and for each year, determine the domestic base price under the Third Schedule to this Act, for the purpose of determining the prices for the power sector, commercial sector and gas based industries.
- (2) The Authority shall continue to determine the prices referred to under subsection (1), if in its opinion, the control of prices for natural gas for the strategic sector is required.

- (3) The price control and the corresponding role of the domestic gas aggregator shall not be required, where the-
 - (a) entire domestic gas demand requirement under section 173 (2) is covered by contracts under sections 110 (2) and 173 (3) of this Act; or
 - (b) domestic market for natural gas is largely characterised by free market based contracting for natural gas between willing buyers and willing sellers, based on criteria established by the Authority in consultation with the stakeholders and at such time the provisions of subsections (4), (5), (6) and (7) and section 168 shall no longer be applicable and the criteria under this subsection may include that certain classes of wholesale customers, but not all, of the strategic sectors will no longer be subject to price controls as part of an ongoing process towards full free market conditions.
- (4) The aggregate gas price for a month shall be the price calculated based on the procedures established by the domestic gas aggregator on the basis of the prices determined by the Authority under subsection (1).
- (5) The price of marketable natural gas applicable to the power sector shall be the domestic base price at the marketable natural gas delivery point.
- (6) The price of marketable natural gas applicable to the commercial sector shall be the domestic base price at the marketable natural gas delivery point plus US \$0.50 per MMBtu.
- (7) Gas distributors shall not be part of the strategic sectors and shall negotiate the supply and pricing of their natural gas directly, provided that the applicable price for gas distributors for the marketable natural gas at the marketable gas delivery point shall not exceed that of the commercial sector under subsection (6).
- (8) Where applicable, wholesale gas suppliers, the wholesale customers of the strategic sectors and gas distributors shall pay for the transportation cost of the marketable natural gas from the marketable natural gas delivery point to the facilities of the wholesale customers.
- (9) The wholesale gas suppliers, wholesale customers of the strategic sectors and gas distributors shall, for the purpose of transportation, have the option to-
 - (a) use the gas transportation network applicable to their geographical areas; or
 - (b) obtain a gas transportation licence in order to transport their natural gas connecting to the gas transportation network, another existing gas transportation pipeline or directly to a marketable natural gas delivery point.
- (10) Each producer client shall, for any month, receive from the escrow account of the domestic gas aggregator an amount that is equal to the aggregate gas price multiplied by the customer client volume that was paid for such producer client in such month by the customer client.

168. Gas based industries gas price

- (1) Subject to the provisions of section 167 (3) of this Act, the gas price for the gas based industries shall be determined by the pricing principles specified in the Fourth Schedule to this Act.
- (2) The floor price for the gas based industries shall be US \$0.90 per MMBtu.
- (3) The ceiling price shall be the domestic base price applicable for any particular year.
- (4) The prices determined in the Fourth Schedule to this Act shall be prices at the marketable gas delivery point from where transport costs need to be added for delivery to the respective gas based industries.
- (5) The Authority may by regulation adjust the price mechanism to add other gas based industries in line with market realities.

169. Power to regulate and review prices

- (1) Where the Authority determines that-
 - (a) a particular licenced activity is a monopoly service,
 - (b) competition has not yet developed in the market to such an extent as to protect the interests of customers, or
 - (c) a particular licensee is a dominant provider, the Authority shall regulate the prices charged by licensees in respect of the activities, in a manner consistent with its functions under this Act and with the pricing principles set out in section 170 of this Act.
- (2) The Authority shall undertake periodic pricing methodology reviews, provided that the pricing methodology review shall not affect arrangements entered into or approvals given for the development of a gas infrastructure or utilisation project prior to the effective date.
- (3) The Authority shall consult with licensees, industry participants and stakeholders before undertaking a pricing review or establishing a methodology for regulating prices and revenues earned by licensees providing monopoly or dominant services.

170. Pricing principles in relation to gas

Subject to the provisions of this Chapter, the Authority shall, in the exercise of its powers to regulate prices charged by licensees, be guided by the following principles-

- (a) marketable natural gas prices shall be disaggregated into the component elements of the supply chain including the costs of wholesale gas, tariffs for gas processing, tariffs for transportation pipelines for natural gas, distribution and supply;
- (b) the prices charged for each licenced activity shall reflect the costs incurred in the efficient provision of that activity;
- (c) prices charged shall permit a reasonable return for licensees on their investments; and
- (d) prices shall not discriminate between customers with similar characteristics, such as similar size or a similar consumption profile.

171. Public service obligations related to policy issues

The Authority may issue regulations imposing public service obligations on licensees in relation to matters including-

- (a) security of supply;
- (b) economic development and the achievement of wider economic policy objectives;
- (c) environmental protection; and
- (d) health and safety.

172. Public Service levy

- (1) The Authority shall, by regulation, provide for the recovery of any additional costs incurred in complying with the public service obligations through a public service levy, which may be imposed on customers, provided that it would, in the opinion of the Authority, be in the wider public interest.
- (2) The amount of, and mechanism for the collection and remittance of, the public service levy imposed on each customer shall be set out in the regulations contemplated by subsection (1).

173. Domestic gas demand requirement

- (1) The Authority shall, prior to the 1st of March of each calendar year, determine the domestic gas demand requirement and inform the Commission of this requirement.
- (2) Subject to subsection (3), the domestic gas demand requirement shall be the total amount of marketable natural gas required for all wholesale customers of the strategic sectors.
- (3) Each wholesale customer of the strategic sectors shall have the right to negotiate its own supply contracts directly with lessees or suppliers and where the wholesale customer is of the view that the contracts are satisfactory for its requirements, it shall inform the-

- (a) Authority that there is no need to be a customer client of the domestic gas aggregator; and
- (b) Commission of the lessees from which the required marketable natural gas has been obtained.

PART V—ADMINISTRATION OF MIDSTREAM AND DOWNSTREAM
PETROLEUM LIQUIDS OPERATIONS

174. Activities requiring a licence for midstream and downstream petroleum liquids operation

- (1) Except in accordance with an appropriate licence issued by the Authority, a person shall not undertake the following activities with respect to midstream petroleum liquids operations-
 - (a) establish, construct or operate a terminal or other facility for the export or importation of crude oil or petroleum products;
 - (b) establish, construct or operate a crude oil refinery;
 - (c) establish, construct or operate a pipeline for the bulk transportation of petroleum liquids;
 - (d) engage in bulk transportation of petroleum liquids by rail, barge or other means within Nigeria;
 - (e) establish, construct or operate a facility for the bulk storage of petroleum liquids;
 - (f) establish, construct or operate a petroleum liquids transportation network;
 - (g) engage in the bulk sale of petroleum liquids; or
 - (h) undertake construction or operation of any facility for the production of lubricants or petrochemicals based on petroleum products.
- (2) Except in accordance with an appropriate licence or permit issued by the Authority, a person shall not undertake the following activities with respect to downstream petroleum products operations-
 - (a) construct or operate any facility for the distribution or sale of petroleum products to retail customers;
 - (b) establish, construct or operate a depot for the storage of petroleum products; or

- (c) undertake distribution, marketing or retail trading of petroleum products.
- (3) The Authority may, by regulation, prescribe additional activities to be undertaken only on the basis of a licence or permit and shall have power to issue licences or permits for the activities in accordance with this Act.
- (4) Where a person engages in any of the activities set out in subsection (1), (2) or (3) without a licence or permit, the Authority shall-
 - (a) seal the premises where the activity is undertaken;
 - (b) dismantle and seize the facilities by which the activities were undertaken;
 - (c) confiscate equipment or materials employed by the person in such activity; or
 - (d) impose penalties as prescribed by regulations under this Act.
- (5) Notwithstanding any provision of this Act, a person who engages in any of the activities set out in subsection (1), (2) or (3) without a licence or permit, commits an offence and is liable on conviction to imprisonment for a term of-
 - (a) one year or to a fine prescribed by regulation, in the case of an activity requiring a licence; or
 - (b) six months or to a fine prescribed by regulation, in the case of an activity requiring a permit.
- (6) A holder of a subsisting lease, licence or permit who is engaged in activities in midstream or downstream petroleum liquids operations prior to the effective date shall, within 18 months from the effective date, apply to the Authority for, and the Authority may issue the appropriate licence or permit, where applicable.
- (7) The provisions of subsections (4) and (5) shall not apply to any person under subsection (6) until the Authority has considered the application and given a decision.
- (8) Where any person, in applying for a licence or permit, knowingly makes a false or misleading statement, the Authority may-
 - (a) suspend or revoke the licence or permit; or
 - (b) impose a fine on the licensee or permit holder on the basis of the false or misleading information.
- (9) Crude handling agreements and any other agreements among parties entered into prior to the effective date related to midstream or downstream operations shall be submitted for review to

the Authority and the Commission and where so ordered by the Authority or Commission, as the case may be, amendments shall be made in such agreements to comply with the Act.

175. Special regulations for midstream and downstream petroleum liquids operation

In addition to any matter provided under section 113 of this Act, the Authority may issue regulations with respect to midstream and downstream petroleum liquids operations, which shall include-

- (a) the establishment and operation of a wholesale market, to ensure the continuity of supply of petroleum products to customers, that will apply to the owners and operators of crude oil refineries, transportation pipelines and other facilities or vessels for the bulk transportation of petroleum liquids, bulk storage facilities for petroleum liquids and terminals and outlets for retail trading of petroleum products; and
- (b) matters ancillary to or consequential on the activities set out in paragraph (a).

176. Rights of way relating to midstream and downstream petroleum liquids operation

Subject to applicable law and the terms and conditions prescribed by the Authority, a licensee or permit holder is entitled to rights of way for the laying, operation and maintenance of petroleum liquids transportation pipelines, communication lines, power lines and other similar lines through or across the areas the licensee or permit holder may require for carrying on midstream or downstream petroleum liquids operations under the licence or permit.

177. Surface rights reserves for the Authority for midstream and downstream petroleum liquids operation

The Authority may for the purpose of efficiency, preserve rights of way, easements or other rights over any surface or seabed areas subject to an existing licence or permit, which may be necessary for the laying, operation and maintenance of petroleum liquids transportation pipelines, communication lines, power lines and other similar lines and any right of way or other rights reserved shall continue for the benefit of any entity to whom the Authority may subsequently grant the same for a licence or permit.

178. Petroleum liquids midstream network code

- (1) The Authority may in consultation with licensees and other stakeholders with respect to midstream petroleum liquids operations, develop a network code governing the terms of access into facilities and infrastructure used in midstream petroleum liquids operations.
- (2) The network code may include the following matters-
 - (a) a connection and interconnection policy, standard terms for connection to an open access petroleum liquids transportation pipeline or petroleum liquids transportation network and a statement of the connection charging methodology;
 - (b) a mechanism by which users reserve capacity in facilities and infrastructure and at any time there is a greater demand for access than available capacity, a mechanism for allocating capacity between users;

- (c) the nomination;
 - (d) requirements for the provision of information to the petroleum liquids transportation network operator about the volume, timing and flow-rate of injections into and withdrawals from the petroleum liquids transportation network;
 - (e) the structure of charges and the applicable tariffs charged for using the petroleum liquids transportation network;
 - (f) the balancing of crude oil, condensates or petroleum products being conveyed;
 - (g) registration arrangements;
 - (h) metering, allocation and settlement arrangements;
 - (i) governance arrangements; and
 - (j) the maintenance of a register of customers and suppliers.
- (3) The petroleum liquids midstream network code shall be published on the website of the Authority and physical copies shall be made available to interested persons on payment of a prescribed fee.

179. Third party access relating to midstream and downstream petroleum liquids operation

- (1) Subject to section 162 of this Act, any person licenced under the provisions of this Act to supply petroleum liquids shall be permitted third party access to facilities and infrastructure used for midstream petroleum operation by owners, operating on their own account, of such facilities and infrastructure-
- (a) in the manner prescribed by this Act, the regulations, codes and other guidelines issued by the Authority under this Act; and
 - (b) on commercially viable terms based on a cost reflective pricing methodology.
- (2) The Authority may mediate in disputes related to third party access.

180. Conditions for the provision of open access in relation to petroleum liquids operation

- (1) Where open access applies, open access to the facilities and infrastructure used with respect to midstream petroleum liquids operations shall be-
- (a) undertaken on a non-discriminatory basis between system users with similar characteristics under section 116 of this Act,

- (b) provided in respect of any available capacity, where the capacity is not subject to a previous contractual commitment,
- (c) provided in accordance with and governed by the terms and conditions of the network code approved by the Authority, where applicable,
- (d) provided on the condition that the applicant for access is or becomes a party to and undertakes to comply with the applicable network code, and
- (e) subject to the pricing principles set out in section 207 of this Act:

Provided that facilities and infrastructure which are specifically defined by the Authority for the storage of national strategic stocks shall be exempt from the provisions of this Act relating to open access.

(2) The Authority may mediate in disputes in respect of open access.

181. National strategic stocks

The Authority shall-

- (a) establish, administer and ensure the storage and distribution of the national strategic stocks of petroleum products in accordance with regulations issued by the Authority;
- (b) determine and publish the amount to be charged as a levy for the financing of the national strategic stocks, which shall form part of the retail price of each petroleum product, such levy to be determined as a percentage of the retail price and be deducted on wholesale basis; and
- (c) designate, in consultation with the appropriate authorities and national security agencies, the strategic locations across the country where the national strategic stocks shall be distributed and maintained.

182. Operating stock

The Authority shall ensure that all companies with a licence for the bulk storage of petroleum products granted under section 187 of this Act maintain operating stocks in accordance with guidelines published by the Authority.

183. Grant of a crude oil refining licence

- (1) Subject to sections 111 and 174 of this Act and upon the approval of the Authority of an application and payment of a prescribed fee by a qualified person, the Minister may, on the recommendation of the Authority, grant and issue to that person a crude oil refining licence which shall permit the licensee to-

(a) procure, construct, install and operate facilities to process crude oil on its own account into derivative chemicals and petroleum products; and

(b) sell such chemicals and petroleum products at the exit of the refinery.

(2) In considering an application for a crude oil refining licence, the Authority shall take into account the economic case for a refinery, including the potential demand for its use.

184. General duties of crude oil refiner

The crude oil refiner shall undertake the activities contemplated by the licence in a manner that best complies with the following general obligations, to-

(a) procure, construct, install, operate and maintain its refinery and associated facilities in an economical, safe, reliable and environmentally friendly manner;

(b) shut down its facilities in emergencies and in order to carry out maintenance or in accordance with curtailment directives issued by the Authority;

(c) manage its facilities as a reasonable and prudent operator;

(d) avoid any act or omission that may affect the compatibility of the refinery with any facility or network that is likely to prejudice the public interest or the integrity of network operations;

(e) produce petroleum products to a quality suitable for the transportation system as specified in the licence;

(f) produce petroleum products to a quality suitable for use in accordance to the specifications approved by the Authority;

(g) treat all customers in a non-discriminatory manner under section 116 of this Act; and

(h) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

185. Access rights

A crude oil refiner shall have the right of access to facilities, including harbours, jetties, petroleum bulk storage, transportation facilities and pumping installations in accordance with the open access or third party access requirements and the tariff methodology approved by the Authority.

186. Conditions applicable to a crude oil refining licence

In addition to conditions as may be imposed by the Authority under section 114 of this Act, a crude oil refining licence shall be deemed to be granted subject to the conditions that the holder shall-

- (a) conduct its licenced activities safely and reliably in compliance with any law in force and prescribed health and safety related regulations, standards and operating procedures issued under this Act;
- (b) have regard to the effect of its licenced activities on the environment and complying with the requirements for environmental protection, management and restoration under this Act;
- (c) mark, maintain and secure the boundaries of its facilities and associated infrastructure constructed under the terms of its licence and any law in force; and
- (d) comply with any conditions precedent or other conditions as the Authority may prescribe by regulation.

187. Grant of a bulk petroleum liquids storage licence

- (1) Subject to sections 111 and 174 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person bulk petroleum liquids storage licence authorising the holder to undertake the bulk storage of petroleum liquids whether for its own account or on behalf of customers as provided for in the licence.
- (2) In considering an application for a bulk petroleum liquids storage licence, the Authority shall take into account the economic case for bulk storage facility, including the potential demand for its use.

188. General duties of a bulk storage licensee

The holder of a bulk petroleum liquids storage licence shall undertake the activities contemplated by the licence in a manner that best complies with the following general obligations, to-

- (a) establish and make available to the public at its offices, the-
 - (i) procedure for obtaining third party access or open access, as provided for in the licence, throughput and terminating its services, and
 - (ii) method of response to the request for its service;
- (b) procure, construct, install, operate and maintain its facilities in a safe, economical, reliable and environmentally friendly manner taking into account any strategic plans formulated by the Authority;
- (c) shut down its facilities in emergencies and in order to carry out maintenance or in response to curtailment directives issued by the Authority;
- (d) grant third party access to use or have access to spare capacity within its facilities for the purpose of ensuring competitive supply of crude oil and petroleum products, where the licensee operates on its own account;

- (e) consult with the Authority and obtain written permission prior to any modification of technical and operational rules of practice concerning the operation of its facilities;
- (f) conduct its licenced activities in a non-discriminatory manner between all classes of customers under section 116 of this Act, where the licence is for bulk storage for customers and is operated on an open access basis;
- (g) manage its facilities as a reasonable and prudent operator; and
- (h) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

189. Conditions applicable to a bulk petroleum liquids storage licence

In addition to conditions as may be imposed by the Authority under section 114 of this Act, a bulk petroleum liquids storage licence shall be deemed to be granted subject to the conditions that the holder shall-

- (a) where the licence is operated for the own account of the licensee, the licensee may own the petroleum liquids contained in the storage and where the licence is operated on an open access basis the licensee shall not own the petroleum liquids;
- (b) conduct its licenced activities safely and reliably in compliance with any law in force and prescribed health and safety related regulations issued under this Act;
- (c) have regard to the effect of its licenced activities on the environment and complying with the requirements for environmental protection, management and restoration under this Act; and
- (d) mark, maintain and secure the boundaries of its facilities and associated infrastructure constructed under the terms of its licence and any law in force.

190. Grant of petroleum liquids transportation pipeline licence

- (1) Subject to sections 111 and 174 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a petroleum liquids transportation pipeline licence with the exclusive right to own, construct, operate and maintain a transportation pipeline for the bulk transportation of petroleum liquids within a route as defined in the licence for its own account with third party access provisions or as common carrier as stipulated in the licence.
- (2) In considering an application for a petroleum liquids transportation pipeline licence, the Authority shall take into account the economic case for a petroleum liquids transportation pipeline including the potential demand for its use.

191. General duties of a petroleum liquids transportation pipeline owner

The holder of a petroleum liquids transportation pipeline licence shall undertake the activities contemplated by the licence in a manner that best complies with the following general obligations-

- (a) establish and make available to the public at its offices, the-
 - (i) procedure for obtaining and terminating transmission and interconnection services, and
 - (ii) method of response to the request for its service;
- (b) construct, operate and maintain its petroleum liquids transportation pipeline in a safe, economical, and reliable manner taking into account any strategic plans formulated by the Authority;
- (c) manage supply shortfalls and meet on a reasonable endeavours basis requests for transportation above contractual volumes;
- (d) shut down its petroleum liquids transportation pipeline in emergencies and in order to carry out maintenance or in response to curtailment directives issued by the Authority;
- (e) provide access on a non-discriminatory basis under section 116 of this Act, where the licence is granted on a common carrier basis and provide for third party access pursuant to the licence conditions where the transportation pipeline is operated for the own account of the licensee;
- (f) consult with the Authority and obtain written permission prior to any modification of technical and operational rules of practice concerning the operation of its pipeline;
- (g) manage its transportation pipeline as a reasonable and prudent operator; and
- (h) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

192. Conditions applicable to a petroleum liquids transportation pipeline licence

In addition to conditions as may be imposed by the Authority under section 114 of this Act, a transportation pipeline licence shall be deemed to be granted subject to the conditions that the holder shall-

- (a) not own petroleum liquids in the pipeline, where the licence is issued on a common carrier basis;
- (b) where the holder is a licensee operating on its own account, who is a company which is an affiliate of a company that is a lessee, the licensee may own, or the affiliate may

own, the petroleum liquids in a petroleum liquids transportation pipeline for the purpose of removing petroleum liquids from the lease;

- (c) where the holder is a company that also holds a licence to be a wholesale petroleum liquids supplier, operating on its own account, may own the petroleum liquids in a petroleum liquids transportation pipeline, for the purpose of connecting to a lessee or wholesale customer to or from a petroleum liquids transportation network or petroleum liquids transportation pipeline, subject to third party access provisions as may be included in the licence;
- (d) where the holder is a company that also holds licence as a petroleum product distributor, operating on its own account, may own the petroleum liquids in a petroleum liquids transportation pipeline, where the principal user of the transportation pipeline is the petroleum product distributor, subject to third party access provisions as may be included in the licence;
- (e) where the holder is a company that also holds a licence to be a wholesale petroleum liquids supplier, operating on its own account, may own the petroleum liquids in a petroleum liquids transportation pipeline, for the purpose of connecting to a lessee or wholesale customer to or from a petroleum liquids transportation network or petroleum liquids transportation pipeline, subject to third party access provisions as may be included in the licence;
- (f) conduct its licenced activities safely and reliably in compliance with any law in force and prescribed health and safety related regulations issued under this Act;
- (g) have regard to the effect of its licenced activities on the environment and comply with the requirements for environmental protection, management, and restoration under this Act; and
- (h) mark, maintain and secure the boundaries of the pipelines and associated infrastructure constructed under the terms of its licence.

193. Grant of a petroleum liquids transportation network operator licence

- (1) Subject to sections 111 and 174 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a petroleum liquids transportation network operator licence authorising the conduct of activities specified in the licence, which shall include-
 - (a) conveyance of petroleum liquids through the transportation network;
 - (b) balancing the inputs and off takes from the transportation network;
 - (c) providing open access to the transportation network; and

- (d) charging for the use of the transportation network.
- (2) The Authority shall grant only one petroleum liquids transportation network operator licence for specified petroleum liquids within a geographically defined area to a single network operator, provided that the Authority may, at its discretion, issue licences to other parties for the operation of isolated or dedicated pipelines.

194. General duties of a petroleum liquids transportation network operator

The petroleum liquids transportation network operator shall exercise the rights and obligations imposed on it in a manner that best complies with the following general obligations-

- (a) establish and make available to the public at its offices, the-
 - (i) procedure, terms and conditions for obtaining and terminating access and interconnection services to the transportation network, and
 - (ii) method of response to the request for its service;
- (b) operate an efficient and economical transportation network for the safe and reliable conveyance of specified petroleum liquids in a manner that is designed to meet all reasonable demands for the specified petroleum liquids;
- (c) operate a nomination and balancing mechanism and an equitable curtailment of transportation whenever technical or operational expediencies require;
- (d) consult with the Authority and obtain written permission prior to any modification of technical and operational rules of practice concerning the operation of its transportation network;
- (e) ensure the development and operation of a network code and terms for access into the transportation network in collaboration with the Authority, shippers, licensees and permit holders operating essential infrastructure;
- (f) ensure equitable and transparent open access, subject to the provisions of section 116, to the transportation network in accordance with the network code;
- (g) manage the transportation network as a reasonable and prudent operator;
- (h) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition; and
- (i) enter into agreements with transportation pipeline owners, distributors and wholesale customers for connection to, and operation of, the transportation network.

195. Powers of a petroleum liquids transportation network operator

Subject to this Act, the Authority may grant the following special powers or authority to a petroleum liquids transportation network operator to facilitate the conduct of its licenced activities-

- (a) the power to request and obtain from shippers information required to operate the nominations and balancing mechanism to operate the network or to facilitate competition;
- (b) the right to recover, on the basis of an invoice, expenses reasonably incurred in undertaking its licenced activities, subject to any conditions imposed by the Authority with respect to the level and structure of its charges; and
- (c) to purchase petroleum liquids for its own operations for purposes such as testing and commissioning of facilities, compression purposes and line fill.

196. Conditions applicable to a petroleum liquids transportation network operator licence

- (1) In addition to such conditions as may be imposed by the Authority under section 114 of this Act, a petroleum liquids transportation network operator licence may include an obligation to develop market rules in accordance with the provisions of this Act.
- (2) A petroleum liquids transportation network operator may be owner of any or all of the petroleum liquids transportation pipelines in the petroleum liquids transportation network.
- (3) Where third parties are owners of certain petroleum liquids transportation pipelines in the petroleum liquids transportation network, the owners shall be paid by petroleum liquids transportation network operator the tariffs determined for non-operating owners of the pipelines.
- (4) A petroleum liquids transportation network operator shall not misuse its monopoly position in the geographical area to charge franchise or other access charges for providing access to the petroleum liquids transport network other than the charges specifically permitted under this Act and its regulations.

197. Grant of a wholesale petroleum liquids supply licence

- (1) Subject to sections 111 and 174 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a wholesale petroleum liquids supply licence.
- (2) A company that is a lessee producing crude oil or condensates or both or is a holder of a crude oil refining licence is a qualified person for the purpose of subsection (1) and shall be entitled to apply for and be issued a wholesale petroleum liquids supply licence by the Authority.
- (3) A wholesale petroleum liquids supply licence authorises the supplier to sell and deliver petroleum liquids to bulk customers in Nigeria or for export.

198. General duties of a wholesale petroleum liquids supplier

A wholesale petroleum liquids supplier shall undertake the activities contemplated by the licence in a manner that best complies with the following general obligations, to-

- (a) provide a reliable supply of petroleum liquids to purchasers on request, provided that it is economically feasible; and
- (b) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

199. Rights of a wholesale petroleum liquids supplier

Subject to this Act, the Authority may grant the following specific powers or authority to the holder of a wholesale petroleum liquids supply licence to facilitate the conduct of its licenced activities, the right to-

- (a) terminate wholesale supply to a customer in the event of non-payment, following a notice period as prescribed by regulation;
- (b) recover from a customer, on the basis of an invoice and subject to any conditions imposed by the Authority on the level and structure of a licensee's charges and costs reasonably incurred in the supply of petroleum liquids, provided that the sale of petroleum liquids to customers by the wholesale petroleum liquids supplier shall be subject to the provisions of this Chapter; and
- (c) enter a premises, in accordance with a metering code issued by the Authority, for the purpose of reading the meters, testing, maintaining metering equipment, disconnecting customers and to remove meters.

200. Conditions applicable to a wholesale petroleum liquids supply licence

- (1) In addition to conditions as may be imposed by the Authority under section 114 of this Act, a wholesale petroleum liquids supply licence shall be deemed to be granted subject to the supplier-
 - (a) ensuring a reliable and efficient supply of petroleum liquids to customers on request, provided that it is economically feasible;
 - (b) supplying petroleum liquids on request to a customer who is willing and able to pay for connection to the transportation network or transportation pipeline, subject to safety and network capacity constraints; and
 - (c) conducting licenced activities safely, reliably and in an environmentally friendly manner in compliance with any law in force and any health and safety related regulations issued by the Authority under this or any other Act.

- (2) A wholesale petroleum liquids supplier shall undertake its licenced activities in a manner that best complies with the covenants and conditions of the licence and with customer protection measures approved by the Authority.

201. Grant of licence for distribution of petroleum products

Subject to sections 111 and 174 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a petroleum product distribution licence.

202. General duties of petroleum product distributor

In addition to conditions the Authority may impose under section 114 of this Act or that may be prescribed by regulation, a petroleum product distribution licence shall be deemed to be granted subject to the duty of the holder to-

- (a) develop and maintain a safe, efficient, reliable and economical service for the distribution of petroleum products to individual customers and petroleum product retailers;
- (b) carry on its business in a manner that will promote competition and avoid monopoly in the retail supply of petroleum products in Nigeria;
- (c) conduct its licenced activities safely and reliably in compliance with any law in force and prescribed environmental, health and safety regulations issued under this or any other Act;
- (d) publish the prices to be charged and to be paid by a person to whom the distributor sells petroleum products in a manner to ensure adequate publicity unless the Authority prescribes otherwise;
- (e) avoid undue preference or discriminate as between persons or any class of persons in establishing prices; and
- (f) comply with customer protection measures approved by the Authority.

203. Grant of a licence to construct and operate a facility for retail supply and distribution of petroleum products

- (1) Subject to sections 111 and 174 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a petroleum product retail licence authorising the holder to establish, construct and operate a facility to be employed for retail sale of petroleum products.
- (2) The Authority shall issue guidelines in respect of the process for the establishment, construction and operation of facilities to be employed by petroleum product retailers for retail sale of petroleum products.

204. Grant of a licence to construct and operate a facility for the production of petrochemicals

- (1) Subject to sections 111 and 174 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a petrochemicals production licence authorising the holder to establish, construct and operate a facility for the production of petrochemicals and sell the petrochemicals produced.
- (2) The Authority shall issue guidelines in respect of petrochemicals production licences.

205. Pricing regime and power to regulate tariffs

- (1) Subject to the provisions of this section, wholesale and retail prices of petroleum products shall be based on unrestricted free market pricing conditions.
- (2) Where the Authority determines that a particular licenced activity is a monopoly service or a service by an excessively dominant supplier, the Authority shall have the power to regulate the tariffs and prices charged by the respective licensee in respect of the activities in a manner consistent with the Authority's duties under this Act and with the pricing principles set out in section 207 of this Act.

206. Wholesale prices for petroleum products

- (1) The holder of a wholesale petroleum liquids supply licence and a wholesale customer shall, subject to the provisions of this Chapter, negotiate the wholesale prices directly between the parties on an arm's length basis, provided that the transfer price shall be transparent and reflect the transfer price between the parties.
- (2) The Authority shall have power to monitor bulk sale of petroleum products and may publish market-based prices in order to ensure that the transactions are undertaken in a manner that transfer pricing between the supplier and the wholesale customer are undertaken at a transparent arm's length basis.
- (3) The supplier shall, within 14 days of the consummation of a transaction relating to the bulk sale of petroleum products, provide the Authority with information relating to the transaction including, where applicable, the cost incurred by the supplier in the production or supply of the product and other information relevant to the price at which the product is sold.
- (4) A supplier who knowingly provides information, which is false or misleading with respect to the information required in subsection (3) is liable to a fine stipulated by the Authority in regulations.

207. Pricing principles in relation to petroleum products

Where under section 205 (2) of this Act, the Authority regulates the tariffs and prices of a licensee, the Authority shall allow the seller to recover reasonably and prudently incurred costs, including a reasonable return on the capital invested in the business.

208. Publication of prices

Licensees shall publish prices as required by the Authority in a manner that ensures that the customers are able to identify and calculate the extent of charges for which they will become liable.

PART VI—OTHER MATTERS RELATED TO MIDSTREAM AND DOWNSTREAM OPERATIONS

209. Public service obligations

The Authority may issue regulations imposing public service obligations on licensees or a class of licensees in relation to the maintenance of strategic stock for which the Authority shall approve a tariff to be paid by the consumers.

210. Competition and market regulation

The Authority shall, subject to the provisions of the Federal Competition and Consumer Protection Act, have the responsibility to-

- (a) monitor the state of the markets regulated by the Authority;
- (b) administer, monitor and ensure compliance with the provisions of this Act and any law or regulation issued in respect of competition and market regulation;
- (c) monitor market behaviour including the development and maintenance of competitive markets;
- (d) arrest situations of abuse of dominant power and restrictive business practices;
- (e) assess whether the petroleum industry is operating efficiently or the existing market arrangements may constitute barriers to entry into the market for new market participants;
- (f) determine whether there is any anti-competitive activity being carried on and exercise its powers under this section to prevent the continuance of the activity; and
- (g) determine any pre-conditions and any transitional arrangements required for any services to be offered competitively.

211. Power to prevent anti-competitive behaviour

- (1) Subject to the provisions of the Federal Competition and Consumer Protection Act, the Authority shall have the responsibility to prevent anti-competitive behaviour with respect to midstream and downstream petroleum operations and may take any or a combination of the following actions-

- (a) monitor and determine whether any conduct by a licensee or any other person operating or intending to operate in midstream and downstream petroleum operations-
 - (i) has the purpose or effect of substantially lessening competition in any segment of the midstream and downstream petroleum operations,
 - (ii) may likely result in anti-competitive or discriminatory conduct, including an unlawful exercise of market power that may prevent customers from obtaining the benefits of a properly functioning and competitive market,
 - (iii) may amount to practices which reflect an apparent or probable effect of crippling, excluding or deterring the entry of another person into midstream and downstream petroleum operations, or
 - (iv) may likely be indicative of an abuse of dominant position in respect of the provision of any service;
- (b) consider how best to prevent or mitigate abuse of market power in its decisions and determinations regarding matters including licence applications, grant of licence, licence terms and conditions and the regulation of prices for services in competitive markets; and
- (c) where, in the opinion of the Authority there is or may be, anti-competitive behaviour and in particular an abuse of market power, the Authority shall-
 - (i) issue “cease and desist” orders as may be required,
 - (ii) require and compel the disclosure of information from licensees,
 - (iii) undertake inquiries and investigations, and
 - (iv) levy fines prescribed by regulations issued by the Authority, which shall not exceed 5% of the annual turnover of the company for the preceding year.
- (2) Notwithstanding the provisions of this section, where the Authority deems it to be in national interest or necessary to preserve or promote the benefits of a functional and effective competitive market, the Authority may, on the application by a licensee or other person with the ability to influence the price of petroleum products,-
 - (a) give written approval to the application upon such terms and conditions and impose other requirements as it may deem appropriate; and
 - (b) issue directions to prevent or mitigate any conduct that shall or is likely to lead to the unlawful exercise of market power that will prevent customers from obtaining the benefits of a properly functioning and competitive market.

- (3) The Authority may at any time withdraw an approval granted under subsection (2) upon such terms and conditions as it may deem appropriate.

212. Separation of certain licenced activities

- (1) The Authority may require the holder of a licence to maintain separation in management, accounting or legal entities of its licenced or permitted activities, which may prohibit the holder of the licence from directly holding licences of another type.
- (2) Licenced activities between a holder of a licence and an affiliate shall be undertaken in a manner that the transfer pricing between both entities is undertaken on a transparent arm's length basis and in a manner that reflects the pricing principles contained in sections 170 and 207 of this Act.
- (3) A holder of a licence shall not, without the prior written consent of the Authority, directly or indirectly acquire an interest in, purchase or merge with another holder of a licence or an affiliate of a holder of a licence.

213. Non-discrimination among customers

A holder of a licence or permit shall not discriminate between customers or classes of customers or their related undertakings or network users in respect of access, tariffs, prices, conditions or standards of service under section 116 of this Act.

214. Considerations for exercise of the Authority's power

In the exercise of its powers under this Chapter, the Authority may consider-

- (a) the relevant economic market;
- (b) global trends in the relevant economic market;
- (c) the effect on the number of competitors in the market and their respective market shares;
- (d) the effect of barriers to entry into the market;
- (e) the effect of any activity on the range of services in the market;
- (f) the effect of the conduct on the cost and profit structures in the market;
- (g) the ability of any independent licensee or operator to make price or tariff regulating decisions; and
- (h) any other matter which the Authority may deem relevant.

215. Power to serve notice, issue “cease and desist” order

- (1) Where, in the opinion of the Authority, any act or activity prohibited under this Chapter has been or is likely to be undertaken by any person, the Authority may-
 - (a) serve a notice on the person, specifying the act or activity and its intention to issue a “cease and desist” order;
 - (b) direct the person to whom the notice is issued to do or not to do, the specified act or activity; and
 - (c) specify the time frame for compliance with the notice.
- (2) Where the person to whom the notice or directive issued under subsection (1) fails to comply, the Authority may issue a “cease and desist” order.
- (3) The Authority may levy a fine not exceeding 5% of the annual turnover of the company for the preceding year or revoke the licence of any person who fails to comply with a “cease and desist” order or a directive issued under subsection (1).

PART VII—COMMON PROVISIONS FOR UPSTREAM, MIDSTREAM AND DOWNSTREAM PETROLEUM OPERATIONS

216. Consultations for regulations

- (1) The Commission and Authority shall consult with stakeholders prior to finalising any regulations or amendments to regulations.
- (2) The stakeholders to be consulted for any particular regulation shall be lessees, licensees and permit holders that may be impacted by the regulations and such other persons that may be interested in the subject matter of the proposed regulation.
- (3) The Authority or Commission, as the case may be, may, in finalising any regulation under this section, take into consideration any submission made during the stakeholders’ consultation under subsection (1).
- (4) Prior to holding the stakeholders’ consultation under subsection (1), the Commission or Authority, as the case may be, shall publish in at least two national newspapers with wide coverage and on its website, notice of-
 - (a) the stakeholders’ consultation;
 - (b) its invitation to lessees, licensees, permit holders and other stakeholders to participate in the stakeholders’ consultation;
 - (c) the venue and period during which the stakeholders’ consultation is to be held;

- (d) the nature of the matter to which the stakeholders' consultation relates;
 - (e) the matters upon which the Commission or Authority, as the case may be, would require submissions;
 - (f) the form in which stakeholders are to make submissions on the subject matter of the stakeholders' consultation;
 - (g) the period of notice for the commencement of the stakeholders' consultation, which shall not be less than 21 days; and
 - (h) the address or addresses to which the submissions may be sent.
- (5) Notwithstanding the provisions of subsection (1), the Commission or Authority may, in national interest and exigency of the situation, issue a regulation without conducting a stakeholders' consultation.
- (6) A regulation made under subsection (5) shall be valid for not more than one year with effect from its commencement date, except it is confirmed following a stakeholders' consultation conducted in accordance with subsection (3).
- (7) The Commission or Authority, as the case may be, shall fix a date upon which the confirmed regulation under subsection (6) shall come into effect and cause the notice of that commencement date to be published in at least two national newspapers with wide coverage and on its website.

217. Contravention and enforcement of conditions of leases, licences or permits where it appears

- (1) Where it appears to the Commission or Authority that the holder of a lease, licence or permit is contravening, has contravened or is likely to contravene any of the conditions of the lease, licence or permit, the Commission or Authority, as the case may be, may publish a notice in a manner as it considers appropriate to draw the attention of other persons affected or likely to be affected by the contravention or threatened contravention of the lease, licence or permit-
- (a) specifying the actual or potential contravention;
 - (b) directing the holder to do or not to do, the things specified;
 - (c) specifying the remedy and the timeframe for compliance; and
 - (d) notifying the holder of the lease, licence or permit of its intention to issue an enforcement order.

- (2) The holder of the lease, licence or permit and any other interested party shall be entitled to make representations against or in support of a notice published under subsection (1) on a date specified in the notice.
- (3) Where a holder of the lease, licence or permit fails to comply with a notice published under subsection (1), the Commission or Authority, as the case may be, may issue an enforcement order.
- (4) The Commission or Authority may not issue an enforcement order if the holder of the lease, licence or permit-
 - (a) is able to demonstrate to its satisfaction that it is not contravening or about to contravene a condition of a lease, licence or permit, or
 - (b) has ceased to contravene a condition of the lease, licence or permit: Provided that where the earlier contravention was deliberate, the Commission or Authority, as the case may be, may, at its discretion, impose a penalty as prescribed by regulation.
- (5) A holder of a lease, licence or permit who fails to comply with the enforcement order under this section, contravenes the provisions of this Act and is liable as follows, the-
 - (a) Commission shall revoke the permit or recommend to the Minister to suspend or revoke the licence or lease;
 - (b) Authority shall revoke the permit or recommend to the Minister to suspend or revoke the lease, licence; or
 - (c) Commission or Authority, as the case may be, shall impose any other penalty prescribed by regulations.
- (6) The penalty issued under subsection (5) may be reviewed in regulation, in order to reflect the effect of inflation or for other justified reasons.
- (7) The Commission or Authority, as the case may be, may order the sealing up of any premises, including any facility or plant engaged in petroleum operations, where there has been a contravention of this Act or any regulation.
- (8) Subject to any other provisions in this Act, any dispute between a lessee, licensee or permit holder and the Commission or the Authority shall be settled by the Federal High Court.

218. Mandatory registration

A person engaged in petroleum operations, which require a lease, licence or permit by the Commission or Authority under this Act, shall register its undertaking with the Commission or Authority, as the case may be and provide information concerning the activities of the undertakings as may be prescribed in regulations.

219. Register of licences, permits and authorisations

- (1) The Commission and Authority shall establish, maintain and make publicly available, a register of leases, licences, permits and authorisations, issued, revoked, suspended, surrendered or withdrawn and any modification or exemption granted in respect of any lease, licence, permit or authorisation under this Act.
- (2) The officer registering the issuance of any instrument as provided under subsection (1) shall require an acknowledgement of the receipt of a copy of such instrument from the person receiving it in such form as may be prescribed by regulation.
- (3) A license or permit issued under this Act shall be conspicuously exhibited by a licensee or permit holder in a prominent place on the business premises of the licensee or permit holder.

220. Preparation of leases, licences, permits and authorisation

- (1) A lease, licence, permit or authorisation and any exemption granted under this Act shall be prepared in duplicate, one copy shall be delivered to the holder of the lease, licence, permit or authorisation and the other copy to be retained by the Commission or Authority which shall be bound up in a book of the appropriate series within its register and serially numbered.
- (2) The register referred to in section 219 of this Act shall also be kept in an electronic format and soft copies of individual leases, licences, permits, authorisations or exemptions shall be forwarded to the holder of a lease, licence, permit or authorisation.
- (3) The Commission or Authority, as the case may be, shall cause a lease, licence, permit or authorisation to be prepared upon payment of the requisite fees and in the case of leases or licences for upstream petroleum operations the provisions of section 85 shall apply.
- (4) The officer registering a lease, licence, permit or authorisation or exemption under subsection (1) shall require an acknowledgement of the receipt of the copy of the lease, licence, permit or authorisation or exemption from the person accepting such lease, licence, permit or authorisation or exemption in such form as may be prescribed by regulations.

221. Effective date and authentication of licences, permits and authorisations

- (1) The lease, licence, permit or authorisation or any exemption shall be authenticated under the seal of the Commission or Authority, as the case may be and the validity of the lease, licence, permit or authorisation or any exemption shall commence from the date of its issuance.
- (2) The date of issuance of any lease, licence, permit or authorisation or any exemption shall be inscribed on the lease, licence, permit or authorisation or any exemption.

222. Register of memorials and interests

- (1) The Commission or Authority, as the case may be, shall enter in the appropriate register a memorial of any extension, transfer, surrender, revocation, exemption, relinquishment, change

of address, change of name or any other matter affecting the status of or any interest in any lease, licence, permit or authorisation registered under this Chapter together with the date of such entry.

- (2) The Commission or Authority, as the case may be, shall establish and maintain a register in which particulars of any interest or shares transferred or assigned are recorded by the Commission or Authority and the register shall be updated in relation to any change in the status of such interest or shares transferred or assigned.

223. Effect of registration

A lease, licence, permit or authorisation registered under this Chapter shall, subject to the provisions of this Act, be conclusive evidence-

- (a) that the rights described in the lease, licence, permit or authorisation are vested in the person named as the holder of the lease, licence, permit or authorisation; and
- (b) of the conditions and other provisions to which the holder of the lease, licence, permit or authorisation is subject under this Act.

224. Public access to the registry

- (1) The registry and the registers required under sections 219, 222 and 223 of this Act shall be readily accessible to the public during the hours and upon the days designated by the Commission or Authority, as the case may be.
- (2) The Commission and Authority shall maintain an up-to-date electronic form of the registers required under sections 219, 222 and 223 of this Act on its website, which may be accessed for free by any member of the public.
- (3) A member of the public shall, upon the payment of prescribed fees, be entitled to obtain a certified true copy of any document or record contained in the registers referred to in sections 219, 222 and 223 of this Act.

225. Radioactive materials

The storage, application, transportation, and other petroleum operations of radioactive materials and other equipment generating ionizing radiation in all aspects of oil and gas operations shall be in compliance with the Nuclear Safety and Radiation Protection Act and such other legislative provisions as may be applicable.

226. Default approvals

- (1) Any matter which requires the Commission's or Authority's approval under this Act or under any regulation, shall be approved or rejected within the time limit specified in this Act or in any regulation issued by the Commission or the Authority.

- (2) Where no time limit has been specified under this Act or in any applicable regulation, the time limit referred to in subsection (1) shall be 90 days.
- (3) Where the Commission or Authority rejects an application, they shall, within the stipulated time limit, revert with reasons and any rejected application shall be tracked and accurate record of it kept.
- (4) Where the Commission or Authority at the expiration of the stipulated time frame refuses to communicate in writing its approval or rejection to the applicant, the application is deemed to have been approved and the default approval shall be recorded in the appropriate register by the Commission or Authority.

227. Disclosure of confidential or other information

- (1) Where a director or employee of the Commission or Authority, in the course of his duties, acquires information relating to the financial affairs of any person or to any commercial secret or where any other person indirectly acquires such or other information required to be kept confidential under the provisions of this Act from any director or employee of the Commission or Authority, he shall not make use of such information for any unauthorised or unofficial purpose nor disclose it to any other person except-
 - (a) for the purpose of legal proceedings under this Act or any other law; and
 - (b) to the extent that it may be necessary to do so for the purpose of this Act or any other law.
- (2) A director or employee of the Commission or Authority shall not, for personal gain, make use of any information acquired by him in the course of his duties within a period of five years after the date on which he ceased to be a director or employee.
- (3) Any person who contravenes subsection (1) commits an offence and is liable on conviction to the forfeiture of any proceeds accruing to him on account of the contravention and to a fine or other sanctions prescribed in regulation.

228. Offences

- (1) A person shall not-
 - (a) obstruct or assault any officer of the Commission or Authority or any person authorised by the Commission or Authority in the exercise of the powers conferred on the Commission or Authority under this Act;
 - (b) refuse any officer of the Commission or Authority or any person authorised by the Commission or Authority, as the case may be, access to any premises, facilities or retail outlets or refuse to submit to a search of any premises, facilities or retail outlets by any authorised officer or agent of the Commission or Authority; or

- (c) fail to comply with any lawful demand, notice or order of an officer or authorised person of the Commission or Authority in the execution of the officer's duties under this Act.

(2) A person shall not-

- (a) engage in any petroleum operations without a valid lease, licence or permit where such lease, licence or permit is required under this Act;
- (b) unlawfully remove, destroy or damage any facility used for petroleum operations;
- (c) furnish a statement or incomplete information calculated to mislead or wilfully delay or obstruct the Commission or Authority and its officers in the exercise of their duties;
- (d) obstruct or fail to cooperate with the Commission or Authority in its investigation of any suspected crime or corrupt practice;
- (e) act in breach of any relevant network code, where applicable to such person or in violation of this Act in relation to the allocation of available capacity, access and payment of tariffs in respect of the use of any facility or infrastructure; or
- (f) use or permit its facility, infrastructure or equipment to be used for or in relation to the Commission or Authority of any offence.

229. Penalties

- (1) A person who violates the provisions of section 228 of this Act commits an offence and is liable on conviction to a fine prescribed in regulations.
- (2) Where an offence has been committed under section 228 (2) (b) of this Act, the person who committed the offence shall discontinue the operations of the affected infrastructure, facility or equipment until any damage, alteration, malfunction or loss has been rectified and all safety issues have been resolved.
- (3) The Commission or Authority, as the case may be, may by regulation, where necessary, review the amount of the penalty stipulated in subsection (1) to reflect the effect of inflation or for other justified reasons.

230. Refusal to furnish, return or supply information

A person who-

- (a) fails or refuses to furnish, return or supply information to the Commission or Authority or any other lawful authority at the time and in the manner prescribed,

- (b) furnishes a false or incomplete return,
- (c) supplies false or incomplete information,
- (d) wilfully delays or obstructs the Commission or Authority, its officers and agents, police officers and other law enforcement officers in the exercise of the powers or duties conferred or imposed on the Commission or Authority under this Act, or
- (e) conceals, fails or refuses, without reasonable cause, to supply information required by the Commission or Authority or any duly empowered lawful authority at the time and in the manner prescribed or when required to do so,

commits an offence and on conviction by a court of competent jurisdiction is liable to a term of imprisonment and applicable fine as may be prescribed in regulation and with respect to paragraphs (a), (b) and (c), where such offence is repetitive or continues after having been so informed in writing by the Commission or Authority as the case may be.

231. Power to issue administrative penalties

- (1) The Commission or Authority, as the case may be, may assess a penalty in the prescribed amount against any person for prescribed contraventions of this Act, regulations or an order made under this Act.
- (2) Prior to assessing a penalty, the Commission or Authority, as the case may be, shall provide notice to the person-
 - (a) setting out the facts and circumstances that make the person liable to a penalty;
 - (b) specifying the amount of the penalty that is considered appropriate in the circumstances; and
 - (c) informing the person of the person’s right to make representations to the Authority or Commission, as the case may be.
- (3) A person to whom notice is sent under subsection (2) may make representations to the Commission or Authority, as the case may be, in respect of whether or not a penalty should be assessed and the amount of the penalty.
- (4) Representations under subsection (3) shall be made within 30 days after the person received the notice under subsection (2).
- (5) After considering any representations made under subsection (3), the Authority or Commission, as the case may be, may-
 - (a) assess a penalty and set a date by which the penalty is to be paid in full; or
 - (b) determine that no penalty should be assessed.

- (6) The Authority or Commission, as the case may be, shall serve a copy of its decision under subsection (5) on the person who made the representations.

232. Abandonment, decommissioning and disposal

- (1) The decommissioning and abandonment of petroleum wells, installations, structures, utilities, plants and pipelines for petroleum operations on land and offshore shall be conducted in accordance with-
 - (a) good international petroleum industry practice; and
 - (b) guidelines issued by the Commission or Authority, as the case may be, provided that the guidelines shall meet the standards prescribed by the international maritime organisation on offshore petroleum installations and structures.
- (2) A decommissioning and abandonment shall not take place without the written approval of the Commission or Authority, as the case may be.
- (3) The Commission or Authority, as the case may be, shall by written notice, require a lessee, licensee or permit holder to commence the decommissioning and abandonment of a well, installation, structure, utility and pipeline, where such decommissioning and abandonment is required under good international petroleum industry practices or the guidelines.
- (4) In production sharing contracts or any other contractual arrangement under section 85 of this Act responsibilities and liabilities relating to decommissioning and abandonment as specified in this section and section 233 of this Act shall apply to the licensee or lessee as contractor.
- (5) A licensee or lessee may by written notice inform the Commission or Authority, as the case may be, of its intention to decommission or abandon.
- (6) Upon a notice in subsection (5), the lessee or licensee, shall prior to any decommissioning and abandonment, submit to the Commission or Authority, as the case may be, a programme setting out-
 - (a) estimate of the cost of the proposed measures;
 - (b) details of measures proposed to be taken in connection with the shutdown of operations and decommissioning and abandonment of disused installations, structures or other assets used in petroleum operations as the case may be;
 - (c) clear descriptions of the methods to be employed to undertake the work programme, which shall be in line with good international petroleum industry practices and environmental development;

- (d) steps to be taken to ensure maintenance and safeguard, where any installation, structure or pipeline remained disused and in position or are to be partly removed with respect to deep and ultra-deep water environment and where the installation, structure or pipeline is partly removed, the licensee or lessee shall remain liable for any residual liability arising from the installation, structure or pipeline not removed; and
 - (e) assessment of the environmental and social impact of the decommissioning and abandonment measures.
- (7) Installations and structures on land shall be completely removed and the environment restored to its original condition, except for buried transportation pipelines and gathering lines.
- (8) Except for the abandonment of wells, upon the submission of a decommissioning and abandonment programme by the licensee or lessee to the Commission or Authority, as the case may be, consultations shall be made with interested parties and other relevant public authorities and bodies.
- (9) The programme referred to in subsection (6) shall not be approved unless relevant environmental, technical and commercial regulations or standards are complied with.
- (10) Prior to the approval of an application or programme for decommissioning and abandonment, the Commission or Authority, as the case may be, shall ensure that-
- (a) considerations and recommendations are taken in the light of individual circumstances;
 - (b) the potential for reuse of a transportation pipeline together with other existing facility in connection with further hydrocarbon developments is considered before decommissioning;
 - (c) all feasible decommissioning options have been considered and a comparative assessment made;
 - (d) any removal or partial removal of an installation, structure or transportation pipeline is to be performed in a manner that guarantees sustainable environmental development; and
 - (e) any recommendation to leave an installation, structure or gathering line in place is made with regard to its likely deterioration and to the present, possible and future effects on the environment and in the case of offshore installations and structures, consistent with the applicable good international petroleum industry practices.
- (11) The Commission or Authority, as the case may be, shall enforce compliance by any holder of a current licence or lease or a holder of an expired licence or lease who was responsible for the applicable decommissioning and abandonment plan with respect to a licence or lease that

has expired, to carry out its remaining or unfulfilled decommissioning and abandonment obligations under this Act.

- (12) In archiving and maintaining the database of installations, structures and assets set out in subsection (14) the Commission or Authority, as the case may be, shall prescribe the manner and method in which the data shall be submitted by operators.
- (13) The Commission or Authority, as the case may be, may recall a licensee or lessee responsible for a decommissioning and abandonment programme with respect to a licence or lease that has expired or is surrendered or a licensee or lessee that has transferred or divested its interest or equity, to carry out an obligation under this Act, provided however that, where a new company has assumed all respective obligations, with the approval of the Commission or Authority, upon the transfer or divestiture, the licensee or lessee shall have no further responsibilities.
- (14) The Commission or Authority, as the case may be, shall ensure that a list of the installations, structures and pipelines on land and offshore in Nigeria used for petroleum operations and their current status is compiled and made available or accessible to the public annually.

233. Decommissioning and abandonment fund

- (1) Each lessee and licensee shall set up, maintain and manage a decommissioning and abandonment fund held by a financial institution that is not an affiliate of the lessee or licensee, in the form of an escrow account accessible by the Commission or the Authority, as the case may be, under the provisions of the escrow agreement and where funds have been accrued prior to the effective date, such funds shall form part of the decommissioning and abandonment fund established under this Act.
- (2) The decommissioning and abandonment fund shall exclusively be used to pay for decommissioning and abandonment costs.
- (3) Where a lessee or a licensee fails to comply with the decommissioning and abandonment plan, the decommissioning and abandonment fund shall be accessed by the Commission or Authority, as the case may be, to pay for the performance by a third party of such lessee's or licensee's obligations under section 232 of this Act, after the licensee or lessee has been informed of the non-compliance and given a reasonable period to rectify the non-compliance.
- (4) The amounts to be contributed to the decommissioning and abandonment fund shall be based on the following-
 - (a) with respect to upstream petroleum operations, on the decommissioning and abandonment plan approved by the Commission in the field development plan required by section 79 (2) of this Act and where-
 - (i) no decommissioning and abandonment plan exists, and

- (ii) a field is in development or producing, the lessee shall submit a decommissioning and abandonment plan based on the criteria established in section 232 (6) of this Act within one year of the effective date, which when approved by the Commission, shall form the basis of the computation of the amount to be contributed by the lessee; and
 - (b) with respect to midstream petroleum operations, on the decommissioning and abandonment plan submitted under section 111 (3) of this Act and where no such plan exists, the licensee shall submit a decommissioning and abandonment plan to the Authority based on the criteria established in section 232 (6) of this Act within one year of the effective date, which once approved by the Authority shall form the basis of the computation of the amount to be contributed by the licensee.
- (5) The decommissioning and abandonment plan shall establish the yearly amount to be contributed to the respective decommissioning and abandonment fund and the yearly amount shall be based on a reasonable estimate by the licensee or lessee of the applicable decommissioning and abandonment costs, projected forward on a nominal basis and divided by the estimated life of the facilities and the reasonable cost estimate shall be approved by the Commission or Authority, as the case may be.
- (6) The estimated life of the facilities referred to in subsection (5) shall be based on the-
- (a) estimated life of the field, in case of facilities used for upstream petroleum operations; and
 - (b) period of time for which the safe operations of the facilities were designed, in case of facilities used for midstream petroleum operations.
- (7) The estimated yearly contribution under subsection (5) shall be reviewed every 10 years following the first submission.
- (8) A decommissioning and abandonment fund shall be funded by the applicable licensee or lessee based on the yearly amount established in subsection (5) and as provided in a regulation.
- (9) A licensee or lessee shall-
- (a) inform the Commission or Authority, as the case may be, of the establishment of its decommissioning and abandonment fund not more than three months from the date of commencement of production for upstream petroleum operations or the commissioning of the facilities for midstream petroleum operations; and
 - (b) furnish the Commission or Authority, as the case may be, on an annual basis with statements of accounts with respect to its decommissioning and abandonment fund with a copy to be provided to the Service.

- (10) Where the licensee or lessee is a party to a farm out agreement with one or more third parties, a decommissioning and abandonment plan funded in whole or in part by the applicable third parties shall be provided for in the applicable farm out agreement.
- (11) From the effective date, contributions to the decommissioning and abandonment fund shall be eligible for cost recovery and shall be tax deductible, provided that decommissioning and abandonment costs disbursed from the decommissioning and abandonment fund shall not be eligible for cost recovery or deductible for tax purposes.
- (12) Where there is excess in the decommissioning and abandonment fund after the decommissioning and abandonment has been carried out and approved by the Commission or Authority, as the case may be, the excess shall be considered income for production sharing or tax purposes and the amount after the withholding of profit oil and any tax shall be returned to the licensee or lessee.

CHAPTER 3—HOST COMMUNITIES DEVELOPMENT

234. Objectives and regulations

- (1) The objectives of this Chapter are to-
 - (a) foster sustainable prosperity within host communities;
 - (b) provide direct social and economic benefits from petroleum operations to host communities;
 - (c) enhance peaceful and harmonious co-existence between licensees or lessees and host communities; and
 - (d) create a framework to support the development of host communities.
- (2) The Commission and Authority may make regulations with respect to this Chapter on areas within their competence and jurisdiction as specified in this Act.
- (3) The regulations under subsection (2) shall include a grievance mechanism to resolve disputes between settlers and host communities.
- (4) The regulations under subsection (2) shall include the ability of the settlor to make the following adjustments to reduce expenditures where the available funds for administration under section 244 (c) of this Act are insufficient to fund the ongoing operations-
 - (a) reduce the number of members of the Board of Trustees and frequency of meetings;
 - (b) not fund the reserve fund under section 244 (b) and not hire the respective fund manager under section 246;

- (c) reduce the number of members of the management committee under section 247 and the frequency of meetings; and
- (d) reduce the frequency of meetings of the host communities advisory committee under section 249.

235. Incorporation of host communities' development trusts

- (1) The settlor shall incorporate host communities' development trust (in this Act referred to as "the trust") for the benefit of the host communities for which the settlor is responsible.
- (2) Where there is a collectively of settlors operating under a joint operating agreement with respect to upstream petroleum operations, the operator appointed under the agreement shall be responsible for compliance with this Chapter on behalf of the settlors.
- (3) For settlors operating in shallow water and deep offshore, the littoral communities and any other community determined by the settlors shall be host communities for the purposes of this Act.
- (4) The settlor shall for the purpose of setting up the trust, in consultation with the host communities, appoint and authorise a board of trustees ("the Board of Trustees"), which shall apply to be registered by the Corporate Affairs Commission as a corporate body under the Companies and Allied Matters Act in the manner provided under this Chapter.
- (5) The name of the corporate body to be registered by the Board of Trustees shall contain the phrase "host communities' development trust".
- (6) The Commission or Authority, as the case may be, shall-
 - (a) make regulations on the administration, guide and safeguard the utilisation of the trust fund; and
 - (b) have the oversight responsibility for ensuring that the projects proposed by the Board of Trustees are implemented.
- (7) The settlor shall undertake needs assessment that will metamorphose into the community development plan for the purpose of determining the projects to be undertaken by the host communities development trust.

236. Timeframe for incorporation of host communities' development trusts

The host communities development trust shall be incorporated-

- (a) within 12 months from the effective date for existing oil mining leases;

- (b) within 12 months from the effective date for existing designated facilities;
- (c) within 12 months from the effective date for new designated facilities under construction on the effective date;
- (d) prior to the application for field development plan for existing oil prospecting licences;
- (e) prior to the application for any field development plan under a petroleum prospecting licence or petroleum mining lease granted under this Act; and
- (f) prior to commencement of commercial operations for licensees of designated facilities granted under this Act.’

237. Transfer of settlor’s interest and obligations subject to host communities’ development trusts obligation

- (1) Subject to the provisions of this Act, where the whole or part of an interest in a licence or lease governed by this Act is assigned, novated or otherwise transferred to another party, the legal and equitable interest, rights and obligations of the transferor in relation to any associated host communities development plan and host communities development trust, shall be deemed to attach to the property to be transferred to the transferee, the legal and equitable interests, rights and obligations of the transferor shall be deemed to become the interests, rights and obligations of the transferee.
- (2) Where the whole or part of a licence or lease governed by this Act is surrendered under this Act, the holder or holder nominee will continue to discharge its surviving obligations, notwithstanding that the area that is surrendered may be granted to a new lessee or licensee and where the surviving obligations have been complied with the holder shall have no further obligations relating to the part that was surrendered or the whole of the licence or lease where the entire licence or lease was surrendered.
- (3) Where any licence or lease governed by this Act is revoked, terminated or expired, the holder will continue to discharge its surviving obligations, notwithstanding that the area revoked, terminated or expired may be granted to a new lessee or licensee and where the surviving obligations have been complied with, the holder shall have no further obligations.

238. Failure to incorporate host communities development trust

Unless as otherwise provided for in this Act, failure by any holder of a licence or lease governed by this Act to comply with its obligations under this Chapter, after having been informed of such failure in writing by the Commission or Authority as the case may be, may be grounds for revocation of the applicable licence or lease.

239. Objectives of host communities’ development trusts

- (1) The constitution of the host communities development trust shall allow the host communities development trust to manage and supervise the administration of the annual contribution of the settlor contemplated under this Chapter and any other sources of funding.
- (2) The objectives of the host communities development trust shall be specified in the constitution as set out in subsection (3) (a) to (e).
- (3) The objectives of the host communities development trust shall include, to –
 - (a) finance and execute projects for the benefit and sustainable development of the host communities;
 - (b) undertake infrastructural development of the host communities within the scope of funds available to the Board of Trustees for such purposes;
 - (c) facilitate economic empowerment opportunities in the host communities;
 - (d) advance and propagate educational development for the benefit of members of the host communities;
 - (e) support healthcare development for the host communities;
 - (f) support local initiatives within the host communities, which seek to enhance protection of the environment;
 - (g) support local initiatives within the host communities which seek to enhance security;
 - (h) invest part of available fund for and on behalf of the host communities; and
 - (i) assist in any other developmental purpose deemed beneficial to the host communities as may be determined by the Board of Trustees.
- (4) Notwithstanding the provisions of this Act relating to funding of the trust fund, nothing shall preclude the host communities from their entitlements under any other law.

240. Sources of funding for petroleum host communities' development trusts

- (1) The constitution of each host communities development trust shall establish a fund comprising of one or more accounts (“host communities development trust fund”) to be funded under this section.
- (2) Each settlor, where applicable through the operator, shall make an annual contribution to the applicable host communities development trust fund of an amount equal to 3% of its actual annual operating expenditure of the receding financial year in the upstream petroleum

operations affecting the host communities for which the applicable host communities development trust fund was established.

- (3) Each host communities development trust may receive donations, gifts, grants or honoraria that are provided to such host communities development trust for the attainment of its objectives.
- (4) Profits and interest accruing to the reserve fund of host communities development trust shall also be contributed to the applicable host communities development trust fund.

241. Matters on which the funds may be utilised

The constitution of each host communities development trust shall provide that the applicable host communities development trust fund be used exclusively for the implementation of the applicable host communities development plan.

242. The Board of Trustees, composition and management

- (1) The constitution of the host communities development trust shall contain provisions requiring the Board of Trustees to be set up by the settlor, who shall determine its membership and the criteria for their appointment, provided that the membership of the Board of Trustees of the host communities development trust shall be subject to the approval of the Commission or Authority, as the case may be.
- (2) The settlor shall, in consultation with the host communities determine the membership of the Board of Trustees to include persons of high integrity and professional standing, who shall come from the host communities and the Members of the Board of Trustees shall elect a Chairman from amongst themselves.
- (3) The settlor shall determine-
 - (a) the selection process, procedure for meeting, financial regulations and administrative procedures of the Board of Trustees;
 - (b) the remuneration, discipline, qualification, disqualification, suspension and removal of members of the Board of Trustees; and
 - (c) other matters other than the above relating to the operation and activities of the Board of Trustees.
- (4) Each member of the Board of Trustees shall serve a term of four years in the first instance and may be reappointed for another term of four years and no more.
- (5) Board of Trustees shall have a secretary, who shall be appointed by the settlor to keep the books of the Board.

243. Duties and functions of Board of Trustees

The Board of Trustees shall be responsible for the general management of the host communities development trust and shall be responsible for-

- (a) determining the criteria, process and proportion of the host communities development trust fund to be allotted to specific development programs;
- (b) approving the projects for which the host communities development trust fund shall be utilised;
- (c) providing general oversight of the projects for which the host communities development trust fund shall be utilised;
- (d) approving the appointment of fund managers for purposes of managing the reserve fund;
- (e) set up the management committee of the host communities development trust and appoint its members; and
- (f) determining the allocation of funds to host communities based on the matrix provided by the settlor.

244. Allocation of funds

The Board of Trustees shall in each year and under section 240 of this Act allocate from the host communities development trust fund, a sum equivalent to-

- (a) 75% to the capital fund out of which the Board of Trustees shall make disbursements for projects in each of the host communities as may be determined by the management committee in furtherance of the objectives set out in section 234 of this Act, provided that any sums not utilised in a given financial year shall be rolled over and utilised in subsequent year;
- (b) 20% to the reserve fund, which sums shall be invested for the utilisation of the host communities development trust whenever there is a cessation in the contribution payable by the settlor; and
- (c) an amount not exceeding 5% to be utilised solely for administrative cost of running the trust and special projects, which shall be entrusted by the Board of Trustee to the settlor, provided that at the end of each financial year, the settlor shall render a full account of the utilisation of the fund to the Board of Trustees and where any portion of the fund is not utilised in a given year, it shall be returned to the capital fund.

245. Matrix for distribution of trust fund

- (1) The settlor shall provide to the Board of Trustees a matrix for distribution of the trust fund to the host communities.
- (2) The Board of Trustees shall utilise the matrix provided under subsection (1) for distribution of the funds in the host communities development trust fund to each of its host communities.

246. Engagement of fund managers

- (1) The Board of Trustees shall engage a fund manager to invest the reserve fund as the fund accrues.
- (2) The Board of Trustees shall manage the interest and profits accruable from the investment of the reserve fund and allocate the gain in accordance with section 244 of this Act.

247. Management committee, composition and powers

- (1) The constitution of the host communities development trust shall contain provisions requiring the Board of Trustees to set up a management committee for the host communities development trust.
- (2) The membership of the management committee shall comprise-
 - (a) one representative of each host community, who shall be nominated by the host community as a non-executive member; and
 - (b) executive members, selected by the Board of Trustees shall be Nigerians of high integrity and professional standing, and may not necessarily be members of the host communities.
- (3) A person appointed under subsection (2) (a) and (b) shall serve a term of four years in the first instance and may be reappointed for another term of four years and no more.
- (4) The Board of Trustees shall in accordance with the host communities development trust determine-
 - (a) the selection process, procedure for meetings, financial regulations and administrative procedures of the management committee;
 - (b) the remuneration, discipline, qualification, disqualification, suspension and removal of members of the management committee; and
 - (c) any other matter relating to the operations and activities of the management committee.

- (5) The management committee shall have a secretary, who shall be appointed by the Board of Trustees to keep the books of the committee.

248. Duties and functions of the management committee

The management committee shall be responsible for the general administration of the host communities development trust on an ad hoc basis and be responsible for the-

- (a) preparation of the budget of the host communities development trust and submit it to the Board of Trustees for approval;
- (b) development and management of the contracting process for project award on behalf of the host communities development trust subject to approval of the Board of Trustees;
- (c) determination of project award winners and contractors to execute projects on behalf of the host communities development trust through a transparent process subject to approval of the Board of Trustees;
- (d) supervision of projects execution;
- (e) nomination of fund managers for appointment by the Board of Trustees for approval, to manage the reserve fund;
- (f) reporting on the activities of the management committee, contractors and other service providers to the Board of Trustees; and
- (g) undertaking of any other function and duty that may be assigned to it by the Board of Trustees to enhance the performance of the host communities development trust.

249. Host communities advisory committee and composition

- (1) The constitution of the host communities development trust shall contain provisions mandating the management committee to set up an advisory committee (“host communities advisory committee”), which shall contain at least one member of each host community.
- (2) The management committee shall in accordance with the constitution of the host communities development trust, determine-
 - (a) the selection process, procedure for meetings, financial regulations and administrative procedures of the host communities advisory committee;
 - (b) the remuneration, discipline, qualification, disqualification, suspension and removal of members of the host communities advisory committee; and
 - (c) any other matter relating to the operations and activities of host communities advisory committee.

- (3) Decisions of the management committee with respect to subsection (2) shall be subject to the approval of the Board of Trustees.

250. Duties and functions of host communities advisory committee

The host communities advisory committee shall perform the following functions-

- (a) nominate member to represent the host communities on the management committee;
- (b) articulate community development projects to be transmitted to the management committee;
- (c) monitor and report progress of projects being executed in the community to the management committee; and
- (d) advise the management committee on activities that may lead to improvement of security of infrastructure and enhancement of peace-building within the communities and the entire area of operation.

251. Host communities needs assessment

- (1) The settlor shall after the grant of any licence or lease issued under this Act, conduct a needs assessment (“host communities needs assessment”) in accordance with this Act and regulations made under this Act.
- (2) Each host communities needs assessment shall, from a social, environmental, and economic perspective-
 - (a) determine the specific needs of each affected host communities;
 - (b) ascertain the effect that the proposed petroleum operations might have on the host communities; and
 - (c) provide a strategy for addressing the needs and effects identified.
- (3) Each host communities needs assessment shall show that the settlor has-
 - (a) engaged with each affected host communities to understand the issues and needs of such host communities;
 - (b) consulted with and considered the reasonable concerns of women, youth and community leaders; and
 - (c) engaged with each affected host communities in developing a strategy to address the needs and effects identified in the applicable host communities needs assessment.

- (4) The settlor shall develop a host communities development plan and shall submit to the Commission or Authority, as the case may be, based on the findings of the host communities needs assessment, in order to undertake its oversight function preparatory to the establishment of the trust.

252. Host communities development plan

The host communities development plan shall be based on the matrix provided for in section 245 and such single plan shall-

- (a) specify the community development initiatives required to respond to the findings and strategy identified in the host communities needs assessment;
- (b) determine and specify the projects to implement the specified initiatives;
- (c) provide a detailed timeline for projects;
- (d) determine and prepare the budget of the host communities development plan;
- (e) set out the reasons and objectives of each project as supported by the host communities needs assessment;
- (f) conform with the Nigerian content requirements provided in the Nigerian Oil and Gas Industry Content Development Act; and
- (g) provide for ongoing review and reporting to the Commission.

253. Financial year of the host communities development trust

The financial year of the host communities development trust shall commence on 1st January and end on 31st December of each year or any other date set for this purpose by the Board of Trustees.

254. Accounts and audit

The constitution of the host communities development trust shall contain provisions requiring the Board of Trustees to-

- (a) keep account of the financial activities of the host communities development trust; and
- (b) appoint auditors to audit the accounts of the host communities development trust annually.

255. Mid-year and annual reports

The constitution of the host communities development trust shall contain provisions requiring the-

- (a) management committee to submit a mid-year report of its activities to the Board of Trustees not later than 31st August of the particular year;

- (b) management committee to submit an annual report accompanied by its audited account to the Board of Trustees not later than 28th February of the succeeding year;
- (c) Board of Trustees to submit an annual report of the activities of the host communities development trust accompanied by its audited account to the settlor not later than 31st March of the particular year; and
- (d) settlor to submit an annual report of the activities of the host communities development trust accompanied by its audited account to the Commission or Authority, as the case may be, not later than 31st May of the particular year.

256. Exemption from income tax

The funds of the host communities development trust created under this Act shall be exempted from taxation.

257. Deduction of payment for petroleum host community development

- (1) Any payment made by the settlor under section 240 (2) of this Act, shall be deductible for the purposes of hydrocarbon tax and companies income tax as applicable.
- (2) Where in any year, an act of vandalism, sabotage or other civil unrest occurs that causes damage to petroleum and designated facilities or disrupts production activities within the host communities, the community shall forfeit its entitlement to the extent of the costs of repairs of the damage that resulted from the activity with respect to the provisions of this Act within that financial year:
Provided the interruption is not caused by technical or natural cause.
- (3) The basis for computation of the trust fund in any year shall always exclude the cost of repairs of damaged facilities attributable to any act of vandalism, sabotage or other civil unrest.

CHAPTER 4 —PETROLEUM INDUSTRY FISCAL FRAMEWORK

PART I—OBJECTIVES AND ADMINISTRATION

258. Objectives

- (1) The objectives of this Chapter are to-
 - (a) establish a progressive fiscal framework that encourages investment in the Nigerian petroleum industry, balancing rewards with risk and enhancing revenues to the Federal Government of Nigeria;
 - (b) provide a forward-looking fiscal framework that is based on core principles of clarity, dynamism and fiscal rules of general application;

- (c) establish a fiscal framework that expands the revenue base of the Federal Government, while ensuring a fair return for investors;
 - (d) simplify the administration of petroleum tax; and
 - (e) promote equity and transparency in the petroleum industry fiscal regime.
- (2) All money collected from the petroleum industry that are due to the Government shall be transferred to the Federation Account in a timely manner, subject to this Act and these payments shall include taxes, royalties, production shares, profit shares, signature bonuses, production bonuses, renewal bonuses, rents, fees, fines, and other levies due in relation to the grant, assignment, termination, and breach of licences, leases and permits.

259. Administration

From the commencement of this Act, the administration and collection of Government revenue in the petroleum industry shall be the function of the Federal Inland Revenue Service (the Service) and the Commission, and-

- (a) the Service shall be responsible for the assessment and collection of-
 - (i) hydrocarbon tax and enforcement of the provisions of this Act as it relates to hydrocarbon tax assessment and revenue collection, and
 - (ii) companies income tax and tertiary education tax in accordance with this Act as it relates to taxable petroleum operations;
- (b) the Commission shall be responsible for the determination and collection of –
 - (i) royalties, signature bonus, rents, and related payments and its enforcement under this Act, and
 - (ii) related payments or production shares, where the model contract includes provisions related to production sharing, profit sharing or risk service provisions; and
- (c) the Authority shall be responsible for the determination and collection of the gas flare penalty arising from midstream operations and its enforcement under this Act.

PART II—HYDROCARBON TAX

260. Application of this Part

- (1) This part applies to companies engaged in upstream petroleum operations in the onshore, shallow water and deep offshore, provided that-

- (a) hydrocarbon tax shall apply to crude oil as well as field condensates and liquid natural gas liquids derived from associated gas and produced in the field upstream of the measurement points; and
- (b) hydrocarbon tax under this Part shall not apply to-
 - (i) associated natural gas, including gaseous natural gas liquids produced in the field and contained in the rich gas, and non-associated natural gas,
 - (ii) condensates and natural gas liquids produced from non-associated gas in fields or gas processing plants, provided the related volumes are determined at the measurement points or at the exit of the gas processing plant, regardless of whether the condensates or natural gas liquids are subsequently commingled with crude oil, and
 - (iii) any condensates and natural gas liquids produced from associated gas at gas processing or other facilities downstream of the measurement points.
- (2) The costs of production of associated gas, upstream of the measurement point shall be allocated to crude oil for the purposes of calculating hydrocarbon tax, provided that capital and operating costs for wells solely producing associated gas-cap gas shall not be allocated to crude oil, but shall be claimed under the Companies Income Tax Act.
- (3) This Part shall not apply to a frontier acreage until it is reclassified under section 68 (3) of this Act and to deep offshore.
- (4) For the purpose of determining royalties, condensates shall be treated as crude oil and natural gas liquids as natural gas.
- (5) Upstream petroleum operations shall also be subject to Companies Income Tax Act.

261. Charge of hydrocarbon tax

There shall be levied upon the profits of any company engaged in upstream petroleum operations in relation to crude oil a tax to be known as hydrocarbon tax, which shall be charged and assessed upon its profits related to the operations and payable during each accounting period in accordance with this Act.

262. Ascertainment of crude oil revenue, adjusted profit, assessable profits and chargeable profits

- (1) Subject to this Act, in relation to any accounting period, the crude oil revenue of a company for that period shall be the value of any chargeable oil adjusted to the measurement points, based on the-
 - (a) proceeds of all chargeable oil sold by the company; and
 - (b) value of all chargeable oil disposed by the company.

- (2) For the purpose of subsection (1), the value of any chargeable oil disposed of, shall be regarded as the aggregate of the value of that crude oil determined for royalties for all fields in accordance with this Act or any applicable law.
- (3) Subject to section 266 (2) of this Act, the adjusted profits of an accounting period shall be the profits of that period after the deductions allowed by section 263 (1) of this Act.
- (4) The assessable profit of an accounting period shall be the adjusted profit of that period after any deduction allowed by section 265 of this Act.
- (5) The chargeable profits of an accounting period shall be the assessable profits of that period after the deduction allowed by section 266 of this Act.

263. Allowable deductions

- (1) In computing the adjusted profit of a company in upstream petroleum operations related to crude oil for any accounting period, there shall be deducted expenses wholly, reasonably, exclusively and necessarily incurred during that period for the following, including but without otherwise expanding or limiting the generality of-
 - (a) rents incurred by the company for the period pursuant to a petroleum mining lease or petroleum prospecting licence;
 - (b) all royalties the liability for which was incurred and were paid by the company during that period in respect of crude oil and associated gas and where a petroleum mining lease includes payments to the Federation Account related to production sharing, profit sharing, risk service contracts or other contractual features under a model contract and the company has incurred liability for such payments in kind or in cash;
 - (c) expenses directly incurred for repair of plant, machinery or fixtures employed for the purpose of carrying on production activities or for the renewal, repair or alteration of production implement, utensils or articles so employed;
 - (d) an expenditure, tangible or intangible directly incurred in connection with the drilling of the first exploration well and the first two appraisal wells in the same field, whether the wells are productive or not, provided that subsequent exploration wells, appraisal wells and other wells shall be treated as qualifying drilling expenditure under the Fifth Schedule to this Act and where a deduction may be given under this section in respect of any such expenditure, that expenditure shall not be treated as qualifying drilling expenditure for the purpose of the Fifth Schedule to this Act;
 - (e) any amount contributed to a fund, scheme or arrangement approved by the Commission for the purpose of decommissioning and abandonment, provided that the surplus or residue of the fund shall be subject to tax under this Act at the end of life of the field, where such surplus is returned to the lessee;

- (f) all sums the liability of which was incurred by the company to the Federal Government or any State or Local Government Council by way of levies, stamp duties and fees;
 - (g) costs of gas reinjection wells, which are re-injecting natural gas that otherwise would be flared, subject to ratification by the Commission; and
 - (h) any amount contributed to any fund, scheme or arrangement approved by the Commission pursuant to the establishment of host communities development trusts under Chapter 3 of this Act, Environmental Remediation Fund, Niger Delta Development Commission and other similar contributions.
- (2) Where a deduction has been allowed to a company under this section in respect of a liability of the company and the liability or part of the liability is waived, released or recovered, the amount of the deduction corresponding to the liability or part thereof shall, for the purpose of section 262 (1) of this Act, be treated as income of the company of its accounting period, in which such waiver or release was made or given.

264. Deductions not allowed

Subject to this Act, for the purpose of ascertaining the adjusted profit of a company in the accounting period from its upstream petroleum operations applicable to crude oil, no deduction shall be allowed in respect of-

- (a) disbursements or expenses not being money wholly, reasonably, exclusively and necessarily incurred for the purpose of those operations;
- (b) expenditure for the purchase of information relating to the existence and extent of petroleum deposits, other than for the acquisition of geophysical, geological and geochemical data and information;
- (c) expenditure incurred as a penalty, natural gas flare fees or imposition relating to natural gas flare;
- (d) financial or bank charges, arbitration and litigation costs, bad debts and interest on borrowing;
- (e) head office or affiliate costs, shared costs, research and development costs or any other like shared indirect production costs;
- (f) production bonuses, signature bonuses paid for the acquisition of, or of rights in or over, petroleum deposits, bonuses or fees paid for renewing petroleum mining lease or petroleum prospecting licence or marginal field or fees paid for assigning rights to another party;

- (g) tax inputted into a contract or an agreement on a net tax basis and paid by a company on behalf of the vendor or contractor;
- (h) capital withdrawn or sum employed or intended to be employed as capital;
- (i) capital employed in improvements as distinct from repairs;
- (j) sum recoverable under an insurance or contract of indemnity, except an amount that is not recovered under the scheme;
- (k) rent of or cost of repairs to any premises or part of premises not incurred for the purpose of those operations;
- (l) amounts incurred in respect of tertiary education tax, companies income tax, any income tax, profits tax or other similar taxes, whether charged within Nigeria or elsewhere;
- (m) the depreciation of any premises, buildings, structures, works of a permanent nature, plant, machinery or fixtures;
- (n) payment to provident, savings, widows and orphans or other society, scheme or fund;
- (o) any contribution to a pension, provident or other society, scheme or fund for production staff which may be approved, with or without retrospective effect, by the National Pension Commission subject to such general conditions or particular conditions in the case of the society, scheme or fund as the Service may prescribe, provided that any sum received by or the value of any benefit obtained by the company, from any approved pension, provident or other society, scheme or fund, in the accounting period of that company shall, for the purpose of section 262 (1) of this Act, be treated as income of the company for that accounting period;
- (p) all customs duties; and
- (q) costs under paragraph 2 (2) (c) of the Sixth Schedule to this Act.

265. Assessable profits and losses

- (1) The assessable profits for each company or petroleum mining lease for any accounting period shall be the amount of the adjusted profit of that period after the deduction of the amount of any loss incurred by that company during any previous accounting period.
- (2) The assessable profit shall be determined separately for each of the two classes of chargeable tax identified in section 267 (a) and (b).
- (3) A deduction under subsection (1) shall be made so far as possible from the amount, if any, of the adjusted profit of the first accounting period after that in which the loss was incurred, and,

so far as it cannot be so made, then from the amount of the adjusted profit of the next succeeding accounting period and so on until such loss is fully deducted.

- (4) Within five months after the end of any accounting period of a company, or within such further time as the Service may permit in writing, the company may elect in writing that a deduction or any part to be made under this section shall be deferred to and be made in the succeeding accounting period, and may so elect in any succeeding accounting period.

266. Chargeable profits and allowances

- (1) The chargeable profits of any company for any accounting period shall be the amount of the assessable profits of that period after the deduction of any amount to be allowed in accordance with the provisions of this section, namely-
 - (a) the aggregate amount of capital allowances due to the company under the provisions of the Fifth Schedule to this Act for the accounting period;
 - (b) the aggregate amount of all production allowances due to the company under the provisions of the Sixth Schedule to this Act for the accounting period; and
 - (c) in the case of acquisition costs of petroleum rights, the value of the rights and the value of the assets acquired shall be reported separately to the Service, provided that the value of the rights shall be eligible for annual allowance of 20% per annum and the value of the assets shall be depreciated based on the applicable depreciation rates for the respective assets, and there shall be a retention of 1% in the last year until the asset is disposed of.
- (2) In determining the chargeable profit, the total cost shall not exceed the cost-price ratio as determined in the Sixth Schedule to this Act.
- (3) The chargeable profits and allowances shall be determined separately for the two classes of assessable profits under section 267 (a) and (b) of this Act.

PART III—ASCERTAINMENT OF CHARGEABLE TAX

267. Chargeable tax

The chargeable tax for any accounting period of a company shall be a percentage of the chargeable profit for that period aggregated and it shall be-

- (a) 30% of the profit from crude oil for petroleum mining leases selected under section 93 (6) (b) and (7) (b) of this Act with respect to onshore and shallow water areas; and

- (b) 15% of profit from crude oil for onshore and shallow water and for petroleum prospecting licences selected under section 93 (6) (a) and (7) (a) of this Act.

268. Additional chargeable tax payable in certain circumstances

- (1) Where, for any accounting period of a company, the amount of the chargeable tax for that period, calculated in accordance with the provisions of this Act other than this section, is less than the amount mentioned in subsection (2), the company is liable to pay an additional amount of chargeable tax for that period equal to the difference between those two amounts.
- (2) The amount referred to in subsection (1) is, for any accounting period of a company, the amount which the chargeable tax for crude oil for that period, calculated in accordance with this Act, would come to, in the case of crude oil exported from Nigeria by the company, the reference in section 262 (1) (a) of this Act to the proceeds of sale were a reference to the amount obtained by multiplying the number of barrels of that crude oil determined at the measurement point by the fiscal oil price per barrel.
- (3) For the purpose of subsection (2), the Commission shall establish the fiscal oil price at each measurement point on an export parity basis under paragraph 8 (1) and (2) of the Seventh Schedule and the total value of the chargeable oil for a company shall be the sum of the multiplications of volume and fiscal oil price at all measurement points as established by the Commission.
- (4) The whole of any additional chargeable tax for crude oil and associated gas payable by a company by virtue of this section for any accounting period shall be payable concurrently with the final instalment of the chargeable tax payable for that period.
- (5) Where there is no fiscal oil price established for a crude oil stream, the Commission shall establish fiscal oil price for such stream and every fiscal oil price per barrel established shall bear a fair and reasonable relationship-
 - (a) to the established fiscal oil price of Nigerian crude oil streams of comparable quality and specific gravity; or
 - (b) where there are no such Nigerian crude oil streams of comparable quality and specific gravity it shall bear a fair and reasonable relationship to the official selling prices at main international trading centers for crude oil of comparable quality and gravity, due regard being had in either case to freight differentials and other relevant factors.
- (6) Where any crude oil, which in relation to a particular company is its chargeable oil, is exported from Nigeria by another company, that crude oil shall for the purpose of this section be deemed to be exported from Nigeria by that particular company.

AND CONSOLIDATION FOR TAX PURPOSES

269. Artificial transactions

- (1) Where the Service is of the opinion that any disposition is not given effect to or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, the Service may disregard any such disposition or direct that such adjustments shall be made with respect to the companies' liability to tax as the Service considers appropriate to counteract the reduction of liability to tax effected or reduction which would otherwise be effected, by the transaction and the companies concerned shall be assessed accordingly.
- (2) In subsection (1), the expression "disposition" includes any trust, grant, covenant, agreement or arrangement.
- (3) For the purpose of this section, the following transactions shall be deemed to be artificial or fictitious, namely, transactions between persons one of whom has control over the other or between persons both of whom are controlled by some other person which, in the opinion of the Service, were not made on terms which might be expected to have been made by independent persons engaged in the same or similar activities dealing with one another at arm's length.
- (4) A company in respect of which any direction is made under this section, shall have a right of appeal in like manner as though for the purpose of Part III of this Chapter such direction was an assessment.
- (5) Subject to this Act, the provisions of the Income Tax (Transfer Pricing) Regulations 2018 shall apply.

270. Pre-production cost

Where a company has not yet commenced the production and sale or disposal of chargeable oil, all costs incurred wholly, reasonably, exclusively and necessarily for the purpose of coming into upstream petroleum operations, subject to sections 263 and 264 of this Act, shall upon commencement of production and sale or disposal of chargeable oil be deemed to have incurred a qualifying pre-production capital expenditure which shall be amortised in line with paragraphs 5 and 17 of the Fifth Schedule to this Act.

271. Trade or business sold or transferred

- (1) Without prejudice to section 275 of this Act, where a trade or business of upstream petroleum operations carried on in Nigeria by a company is sold or transferred to another company for the purposes of better organisation of that trade or business or the transfer of its management and any asset employed in that trade or business is sold or transferred, then, if the Service is satisfied that one of those companies has control over the other or that both companies are controlled by some other person or are members of a recognised group of companies and have been so for a consecutive period of at least three years prior to the date of reorganisation, the provisions set out in subsection (2) shall have effect.

- (2) Where subsection (1) applies, the Service may in its discretion if, on or before the date on which the trade or business is so sold or transferred, the first sale of or bulk disposal of chargeable oil by or on behalf of the company selling or transferring the trade or business has occurred, but the first sale of or bulk disposal of chargeable oil by or on behalf of the company acquiring that trade or business has not occurred, direct that-
- (a) the first accounting period of the company acquiring that trade or business shall commence on the date on which the sale or transfer of the trade or business takes place and end on 31st December of that same year, and the definition of accounting period in section 318 of this Act shall be construed accordingly;
 - (b) for the purpose of the Fifth Schedule to this Act, the asset sold or transferred to the company acquiring that trade or business by the company selling or transferring the trade or business shall be deemed to have been sold for an amount equal to the residue of the qualifying expenditure on the asset on the day following the day on which the sale or transfer occurred; and
 - (c) the company acquiring the asset so sold or transferred shall be deemed to have received all allowances given to the company selling or transferring the trade or business in respect of the asset under the Fifth Schedule to this Act and any allowances deemed to have been received by that company under the provisions of the Fifth Schedule, provided that the Service in its discretion may-
 - (i) require the company selling or transferring the trade or business or the company acquiring that trade or business, to guarantee or give security to the satisfaction of the Service for payment in full of tax due or to become due from the company selling or transferring the trade or business, and
 - (ii) impose such conditions as it deems fit on either of the companies or on both of them.
- (3) In the event of failure by the company or companies selling to fulfil the guarantee or conditions, the Service may revoke the direction and may make the additional assessments or repayment of tax as may be necessary to give effect to the revocation.
- (4) Where the acquiring company makes a subsequent disposal of the assets thereby acquired within the succeeding three years after the date of acquisition, any concession enjoyed under this subsection shall be rescinded and the company shall be treated as if it did not qualify for the concession as at the date of the initial reorganisation.
- (5) Where a trade or business of petroleum operations carried on in Nigeria by a company incorporated under any law in force in Nigeria is sold or transferred to another company and any asset employed in that trade or business is so sold or transferred, and the Service is

satisfied that the companies are not connected and that none has control over the other or both are not controlled by another company, the-

- (a) transaction shall be dealt with under section 266 (1) (c); and
 - (b) accounting period of the new trade or business shall be as provided for in subsection (2).
- (6) For the purpose of subsection (2) (a), the accounting period of the company acquiring that trade or business shall commence on the date on which the sale or transfer of the trade or business to the company takes place or on such date within the calendar month in which the sale or transfer takes place as may be elected by the company with the approval of the Service and end on 31st December of that same year and the definition of “Accounting Period” under this Act shall be construed accordingly.
- (7) A merger, take-over, transfer or restructuring of the trade or business carried on by a company shall not take place without the approval and having obtained direction of the Service on any tax that may be due and payable.
- (8) Reference to a ‘trade or business’ in this section shall include references to any part of the trade or business.

272. Consolidation of costs and taxes

- (1) A company engaged in upstream petroleum operations across terrains shall be allowed to consolidate costs for the purpose of companies income tax.
- (2) A company engaged in upstream petroleum operations related to crude oil across terrains shall be allowed to consolidate costs and taxes for the purposes of hydrocarbon tax only across assets in which it holds licences and leases in accordance with the two categories of chargeable tax stipulated in section 267 of this Act.
- (3) In respect of a company in existence prior to the commencement of this Act, the amount of any loss incurred during any accounting period by a company selling or transferring its trade or business whether to a connected or unrelated party, being a loss which has not been allowed against any assessable profit of any accounting period of that company shall not be allowed against any assessable profit of the company acquiring that trade or business.
- (4) A company that is a contractor in a contract under section 85 of this Act shall be allowed to consolidate its losses and revenues across petroleum prospecting licences and petroleum mining leases granted after the commencement of this Act, for the purposes of subsections (1) and (2) with respect to the two tax classes under section 267 of this Act.

PART V—PERSONS CHARGEABLE

273. Partnership

- (1) Any person, other than a company, who engages in upstream petroleum operations either on his own account or jointly with any other person or in partnership with any other person with a view to sharing the profits arising from the operations, commits an offence.
- (2) Where the person referred to in subsections (1) has benefitted from any profits on upstream petroleum operations, the person shall be subject to hydrocarbon tax and companies income tax under this Act on the profits and shall pay a penalty provided under section 297 of this Act.
- (3) Where two or more companies are engaged in upstream petroleum operations either in partnership, in a joint venture or in concert under any scheme or arrangement, tax shall be charged and assessed on them in accordance with subsection (4).
- (4) The apportionment of any profits, outgoings, expenses, liabilities, deductions, qualifying expenditure and the tax chargeable upon each company shall be in line with the equity interest of the parties under a jointly executed agreement that will be made available to the Service and where no jointly executed agreement is made available, the Commission shall advise the Service the approved equity interest of the parties and it shall be binding on the parties.
- (5) Subject to this Act, where two or more companies are engaged in upstream petroleum operations either in partnership, in a joint venture or in concert under any scheme or arrangement, the Service may make regulation, in compliance with section 61 of the Federal Inland Revenue Service (Establishment) Act, for the ascertainment of tax to be charged or assessed upon each company so engaged.
- (6) Regulations made under subsection (5) may make provisions-
 - (a) with respect to apportionment of any profits, outgoings, expenses, liabilities, deductions, qualifying expenditure and tax chargeable upon each company;
 - (b) for the computation of any tax as if the partnership, joint venture, scheme or arrangement were carried on by one company and apportion that tax between the companies concerned;
 - (c) to accept other basis of ascertaining the tax chargeable upon each of the companies; and
 - (d) which have regard to any circumstances whereby the operations are partly carried on for any company by an operating company whose expenses are reimbursed by those companies.
- (7) Regulations made under this section may be of general application for the purpose of this section and this Part or for a class of arrangement or for a particular application to a specific partnership, joint venture, scheme or arrangement.

- (8) The effect of any regulation made under this section shall not impose a greater burden of tax upon any company so engaged in any partnership, joint venture, scheme or arrangement than would have been imposed upon that company under this Part, if all things enjoyed, done or suffered by such partnership, joint venture, scheme or arrangement had been enjoyed, done or suffered by that company in the proportion in which it enjoys, does or suffers those things under or by virtue of that partnership, joint venture, scheme or arrangement.

274. Company wound up

- (1) Where a company is being wound up or where in respect of a company a receiver has been appointed by any court, by the holders of any debentures issued by the company or otherwise, the company may be assessed and charged to tax in the name of the liquidator of the company, the receiver or any agent in Nigeria of the liquidator or receiver and may be so assessed and charged to tax for any accounting period whether before, during or after the date of the appointment of the liquidator or receiver with respect to companies income tax and hydrocarbon tax.
- (2) Any liquidator, receiver or agent under subsection (1) shall be answerable for doing the acts required to be done by virtue of this Act for the assessment and charge to tax of the company and for payment of such tax.
- (3) A liquidator or receiver under subsection (1) shall not distribute any asset of the Company to the shareholders or debenture holders unless he has made provision for the payment in full of any tax which may be found payable by the company or by the liquidator, receiver or agent on behalf of the company.

275. Avoidance by transfer

Where a company which is or was engaged in petroleum operations transfers a substantial part of its assets to any person without having paid any companies income tax or hydrocarbon tax, assessed or chargeable upon the company, for any accounting period ending prior to such transfer and in the opinion of the Service one reason for such transfer by the company was to avoid payment of such tax then that tax as charged upon the company may be sued for and recovered from that person in a manner similar to a suit for any other tax under section 294 of this Act.

276. Indemnification of representative

Every person answerable under this Act for the payment of companies income tax or hydrocarbon tax on behalf of a company may retain out of any money in or coming to his hands or within his control on behalf of such company so much as shall be sufficient to pay the tax and shall be indemnified against any person for payments made by him in accordance with this Act.

PART VI—APPLICABILITY, ACCOUNTS AND PARTICULARS

277. Preparation and delivery of accounts and particulars

- (1) Every company engaged in upstream petroleum operations related to crude oil shall for each accounting period of the company make up accounts of its profits or losses and prepare the following particulars for the purpose of determining hydrocarbon tax-
 - (a) a statement of accounts of its profits or losses;
 - (b) computations of its actual adjusted profit or loss and actual assessable profits of that period;
 - (c) in connection with the Fifth Schedule to this Act, a schedule showing-
 - (i) the residues at the end of that period in respect of its assets,
 - (ii) all qualifying petroleum expenditure incurred by it in that period,
 - (iii) the values of any of its assets disposed of in that period, and
 - (iv) the allowances due to it under that schedule for that period;
 - (d) in connection with the Sixth Schedule to this Act, a schedule showing total production allowance from each and every field of its upstream petroleum operations related to crude oil;
 - (e) a computation of its actual chargeable profits for that period for the two classes of chargeable profits identified in section 267 (a) and (b) of this Act;
 - (f) a statement of amounts repaid, refunded, waived or released to it, referred to in section 263 (2) of this Act, during that period;
 - (g) a computation of its chargeable tax for that period and where associated gas is being sold or otherwise delivered through the measurement point the methodology used to determine the chargeable tax;
 - (h) duly completed self-assessment form attested to by the principal officer of the company; and
 - (i) evidence of payment of the final instalment.
- (2) Every company engaged in upstream petroleum operations related to crude oil shall, with respect to any accounting period of the company and within five months after the expiration of that period or within five months after the effective date of this Act, whichever is later, deliver to the Service a copy of its accounts, bearing an auditor's certificate, of that period, in

accordance with subsection (1) and copies of the particulars referred to in subsection (1) relating to that period with the copy of the delivered company accounts and each copy of those particulars, shall, where the copies are-

- (a) not estimates, contain a declaration signed by authorised officer of the company or by its liquidator, receiver or the agent of the liquidator or receiver, that the same is true and complete; and
 - (b) estimates, contain a declaration, similarly signed, that the estimate was made to the best of the ability of the person signing same.
- (3) Notwithstanding the provisions of this section, every company which is yet to commence bulk sales or disposal of chargeable oil, shall file with the Service its audited accounts and returns-
- (a) within 18 months from the date of its incorporation, in the case of a newly incorporated company; and
 - (b) within five months after any period ending on 31st December, in the case of any other company, provided that where there is an interval between 31st December of the preceding year and the date on which the company commences the bulk sale or disposal of chargeable oil, natural gas or condensate, the interval shall be deemed to form part of the preceding period.
- (4) A company which fails to comply with subsection (2) or (3) is liable to pay as penalty for late filing-
- (a) N10,000,000 on the first day the failure occurs and N2,000,000 for each and every subsequent day in which the failure continues; or
 - (b) other sum as may be prescribed by the Minister of Finance by order published in the Federal Government Gazette.

278. Power of the service to request further information

The Service may give notice in writing to any company engaged in upstream petroleum operations related to crude oil as the Service may deem necessary requiring the company to furnish further information, within reasonable time as may be specified, in relation to any matter referred to in section 277 of this Act or any other matter which the Service may consider necessary for the purpose of this Act.

279. Powers to call for returns and books

- (1) For the purpose of obtaining information in respect of any company's upstream petroleum operations related to crude oil, the Service may give notice to a company requiring it within a period not less than 21 days from the date of service of the notice, to complete and deliver to the Service any information called for in such notice and in addition or alternatively requiring an authorised representative of such company or its liquidator, receiver or the agent of such

liquidator or receiver, to attend before the Service or its authorised representative on the date or dates as may be specified in the notice and to produce for examination any books, documents, accounts and particulars which the Service may deem necessary.

- (2) Where a company assessable to hydrocarbon tax under the provisions of this Act fails or refuses to keep books or accounts which, in the opinion of the Service are adequate for the purpose of ascertaining the tax, the Service may by notice in writing require it to keep such records, books and accounts as the Service considers to be adequate in a form and in a language as the Service may direct and the company shall keep the records, books and accounts as directed.
- (3) An appeal shall lie from any direction of the Service made under this section to the Tax Appeal Tribunal.

280. Returns of estimated tax

- (1) Not later than two months after the commencement of each accounting period of any company engaged in upstream petroleum operations related to crude oil, the company shall submit to the Service an estimated return of its profits or losses for that accounting period for the purpose of hydrocarbon tax, which shall include-
 - (a) computations of its estimated adjusted profit or loss and of its estimated assessable profits of that period;
 - (b) in connection with the Fifth Schedule to this Act, a schedule showing-
 - (i) the estimated residues at the end of that period in respect of its assets,
 - (ii) all estimated qualifying petroleum expenditure incurred by it in that period,
 - (iii) the values of any of its assets, estimated by references to the provisions of that schedule, to be disposed of in that period, and
 - (iv) the allowances due to it under that schedule for that period;
 - (c) in connection with the Sixth Schedule to this Act, a schedule showing estimated total production allowance from all its upstream petroleum operations related to crude oil on field by field basis;
 - (d) a computation of its estimated chargeable profits of that period; and
 - (e) a computation of its estimated tax for that period.

- (2) Where, at any time during the accounting period, there is a change in price, cost or volume, the company shall submit further returns on a monthly basis containing its revised estimated tax for such period.
- (3) Where the further returns provided for under subsection (2) is not made, the Service shall impose interest at the prevailing LIBOR or any other successor rate plus 10% points for the differential of the revised tax over the estimated tax paid by the company.
- (4) Every return made by a company engaged in upstream petroleum operations related to crude oil in fulfilment of the provisions of this section shall be subject to review and validation by the Service.
- (5) Where a company does not provide the estimates under subsections (1) and (2), the Service shall have the right to determine such estimates on the best of judgment basis and impose same on the company.
- (6) A company which fails to comply with subsection (1) is liable to pay as penalty for late filing-
 - (a) N10,000,000 on the first day the failure occurs and N2,000,000 for each and every subsequent day in which the failure continues; or
 - (b) other sum as may be prescribed by the Minister of Finance by order published in the Federal Government Gazette.

281. Extension of periods for making returns

Where it is shown by any company to the satisfaction of the Service that for some good reason, the company is not able to comply with section 277 of this Act within the time limited by that section or any notice given to it under section 278 or 279 of this Act, within the time limited by any such notice, the Service may grant in writing such extension of that time as the Service may consider necessary.

282. Assessment of tax payable

- (1) The Service shall proceed to assess a company with the hydrocarbon tax for any accounting period of the company immediately after the expiration of the time allowed to such company for the delivery of self-assessment provided for in section 277 of this Act.
- (2) Where a company has delivered a self-assessment for any accounting period of the company, the Service may-
 - (a) accept the self-assessment; or
 - (b) refuse to accept the self-assessment and proceed as provided in subsection (3) upon any failure as mentioned and the like consequences shall ensue.

- (3) Where, for any accounting period, a company files a self-assessment which was rejected by the Service or has failed to file self-assessment as provided in section 277 of this Act within the time limited by that section or has failed to comply with any notice given to it under section 278 or 279 of this Act within the time specified in such notice or within any extended time provided in section 281 of this Act, and the Service is of the opinion that the company is liable to pay hydrocarbon tax, the Service may estimate the amount of the tax to be paid by the company for that accounting period and make an assessment accordingly, provided that-
- (a) the assessment shall not affect any liability otherwise incurred by such company by reason of its failure or neglect to deliver the accounts and particulars or to comply with the notices; and
 - (b) nothing in this subsection shall affect the right of the Service to make any additional assessment under the provisions of section 283 of this Act.

283. Additional assessment

- (1) Where the Service discovers or is of the opinion at any time that, with respect to any company liable to hydrocarbon tax, tax has not been charged and assessed upon the company or has been charged and assessed upon the company at an amount less than that which ought to have been assessed and charged for any accounting period of the company, the Service may within six years after the expiration of that accounting period-
- (a) assess the company, as often as may be necessary, with tax for that accounting period at such amount or additional amount as in the opinion of the Service ought to have been charged and assessed; and
 - (b) may make any consequential revision of the tax charged or to be charged for any subsequent accounting period of the company.
- (2) Where a revision under subsection (1) results in a greater amount of tax to be charged than has been charged or would otherwise be charged, an additional assessment or an assessment for any such subsequent accounting period shall be made and the provisions of this Act as to notice of assessment, objection, appeal and other proceedings under this Act shall apply to any such assessment or additional assessment and to the tax charged.
- (3) For the purpose of computing under subsection (1) the amount or the additional amount of tax for any accounting period of a company which ought to have been charged, all relevant facts consistent with section 289 (4) of this Act shall be taken into account even though it is not known when any previous assessment or additional assessment on the company for that accounting period was made or could have been made.
- (4) Notwithstanding the provisions of this section, where any form of fraud, willful default or neglect has been committed by or on behalf of any company in connection with hydrocarbon tax imposed under this Act, the Service may, at any time and as often as may be necessary,

assess the company on such amount as may be necessary for the purpose of recovering any loss of tax attributable to fraud, willful default or neglect.

284. Making of assessment

- (1) Assessments of hydrocarbon tax shall be made in such form and in such manner as the Service shall authorise and shall contain the-
 - (a) names and addresses of the companies assessed to tax or of the persons in whose names any companies have been assessed to tax, provided that the names of the represented companies are indicated; and
 - (b) particular accounting period and the amount of the chargeable profits and chargeable tax for that period, in the case of each company for each of its accounting periods.
- (2) When any assessment is to be amended or revised, a form of amended or revised assessment shall be made in a manner similar to that in which the original of that assessment was made under subsection (1) showing the amended or revised amount of the chargeable profits and chargeable tax.
- (3) A copy of each assessment and of each amended or revised assessment shall be filed in a list which shall constitute the assessment list for the purpose of this Act.

285. Notices of assessment

- (1) The Service shall cause to be served personally on or sent by courier to a company which is liable to hydrocarbon tax under this Act, by way of an additional assessment or an assessment by the Service, a notice of assessment stating the-
 - (a) accounting period and the amount of its chargeable profits and chargeable tax assessed and charged upon the company;
 - (b) place at which payment of the tax should be made; and
 - (c) rights of the company under subsection (2).
- (2) Where any person in whose name an assessment was made in accordance with this Act, disputes the assessment, the person may apply to the Service by notice of objection in writing, to review and revise the assessment made on him and the application shall be made within 30 days from the date of service of the notice of the assessment, stating the amount of chargeable-
 - (a) profits of the company of the accounting period in respect of which the assessment is made; and
 - (b) tax and the tax which such person claims should be stated on the notice of assessment.

- (3) The Service, upon being satisfied that due to absence from Nigeria, sickness or other reasonable cause, the person in whose name the assessment was made was prevented from making the application within such period of 30 days, shall extend the period as may be reasonable in the circumstances.
- (4) After receipt of a notice of objection referred to in subsection (2), the Service may within such time and place as it shall specify, require-
 - (a) the person giving the notice of objection to furnish such particulars as the Service may deem necessary; and
 - (b) any other person, by notice, to give evidence orally or in writing in respect of any matter necessary for the ascertainment of the hydrocarbon tax payable and the Service may further require that where such evidence is given-
 - (i) orally, it shall be given on oath, and
 - (ii) in writing, it shall be given by affidavit.
- (5) In the event of any person assessed who has objected to an assessment made upon him agreeing with the Service as to the amount of tax liable to be assessed, the assessment shall be amended accordingly and notice of the tax payable shall be served upon the person.
- (6) Where an applicant for revision under subsection (2) fails to agree with the Service on the amount of the hydrocarbon tax, the Service shall give such applicant notice of refusal to amend the assessment as desired by the applicant or may revise the assessment to such amount as the Service may determine and give the applicant notice of the revised assessment and tax payable, together with notice of refusal to any subsequent request to amend the revision and, where necessary, any reference in this Act to an assessment or additional assessment shall be treated as a reference to an assessment or additional assessment as revised under the provisions of this subsection.

286. Errors and defects in assessment and notice

- (1) An assessment, warrant or other proceeding purporting to be made in accordance with this Act shall not be quashed or deemed to be void or voidable for want of form or be affected by reason of a mistake, defect or omission, if the-
 - (a) substance and effect of the assessment is in conformity with the provisions of this Act; and
 - (b) company assessed or intended to be assessed or affected is designated according to common intent and understanding.
- (2) An assessment shall not be invalidated or affected by reason of-
 - (a) a mistake as to the-

- (i) name of a company liable or of a person in whose name a company is assessed,
or
 - (ii) amount of the tax; or
- (b) any variance between the assessment and the notice, if in cases of assessment, the notice be duly served on the company intended to be assessed or on the person in whose name the assessment was to be made on a company, and such notice contains, in substance and effect, the particulars on which the assessment is made.

287. Tax computation

Notwithstanding anything to the contrary in any law-

- (a) all hydrocarbon tax computation made under this Act shall be in US Dollars; and
- (b) any assessment made under section 284 of this Act shall be in US Dollars.

PART VII—APPEALS

288. Appeals to Tax Appeal Tribunal

Any Company or tax payer, who does not agree with an assessment made under section 285 (6) of this Act, may appeal against the assessment to the Tax Appeal Tribunal established under the provisions of section 59 of the Federal Inland Revenue Service (Establishment) Act.

289. Assessment to be final and conclusive

- (1) Where-
 - (a) no valid objection or appeal has been lodged within the time limited by section 285 of this Act or the rules of the relevant tribunal or court, as the case may be, against an assessment as regards the amount of the hydrocarbon tax assessed,
 - (b) the amount of the tax has been agreed to under section 285 (5) of this Act, or
 - (c) the amount of the tax has been determined on objection or revision under section 285 (6) of this Act or on appeal,

the assessment as made, agreed to, revised or determined on appeal, as the case may be, shall be final and conclusive for all purposes of this Act as regards the amount of such tax.

- (2) Where the full amount of the tax in respect of the final and conclusive assessment under subsection (1) is not paid within the appropriate period or periods prescribed in this Act, the provisions relating to the recovery of tax and to any penalty under section 292 of this Act, shall apply to the collection and recovery, subject only to the set-off of the amount of any tax

repayable under any claim, made under any provision of this Act, which has been agreed to by the Service or determined on an appeal against a refusal to admit any such claim.

- (3) Where an assessment has become final and conclusive, any tax overpaid shall be repaid or treated as credit in favour of the assessed party.
- (4) Nothing in section 285 of this Act or in this Chapter shall prevent the Service from making any assessment or additional assessment to hydrocarbon tax for any accounting period which does not involve re-opening any issue on the same facts which have been determined for that accounting period, under section 285 (5) and (6) of this Act by agreement or otherwise or on appeal.

PART VIII—COLLECTION, RECOVERY AND REPAYMENT OF TAX

290. Procedure in cases where objection or appeal is pending

Collection of hydrocarbon tax shall, in cases where notice of an objection or an appeal has been given, remain in abeyance and any pending proceedings for any payment in instalment shall be stayed until the objection or appeal is determined but the Service may in any such case, enforce payment of that portion of the tax which is not in dispute by an application to the tribunal or court, as the case may be.

291. Time within which payment is to be made

Subject to section 280 of this Act, hydrocarbon tax for any accounting period shall be payable in equal monthly instalments together with a final instalment as provided in subsection (4).

- (1) The first monthly payment shall be due and payable not later than the third month of the accounting period and shall be in an amount equal to one-twelfth or where the accounting period is less than a year, in an amount equal to equal monthly proportion, of the amount of tax estimated to be chargeable for such accounting period in accordance with section 280 (1) of this Act.
- (2) Each of the remainder of monthly payments to be made subsequent to the payment under subsection (2) shall be due and payable not later than the last day of the month in issue and shall be in an amount equal to the amount of tax estimated to be chargeable for such period by reference to the latest returns submitted by the company in accordance with section 280 (2) of this Act less so much as has already been paid for such accounting period divided by the number of such of the monthly payments remaining to be made in respect of such accounting period.
- (3) A final instalment of tax shall be due and payable on or before the due date of filing of the self-assessment of tax for such accounting period and shall be the amount of the tax assessed for that accounting period less so much as has already been paid under subsections (2) and (3).

- (4) Any instalments on account of tax estimated to be chargeable shall be treated as hydrocarbon tax charged and assessed for the purposes of sections 292 and 294 of this Act.

292. Penalty for non-payment of tax and enforcement of payment

- (1) Where any hydrocarbon tax or any instalment of tax due and payable is not paid within the appropriate time limit prescribed in section 291 of this Act-
- (a) a sum equal to 10% of the amount of the tax payable shall be added and the provisions of the Act relating to the collection and recovery of tax shall apply to the collection and recovery of such sum;
 - (b) the tax due shall incur interest at the prevailing LIBOR or any successor rate, plus 10% from the date when the tax becomes payable until it is paid and the provisions of this Act relating to collection and recovery of tax shall apply to the collection and recovery of the interest;
 - (c) the Service shall serve a demand notice upon the company or person in whose name a tax is chargeable and if payment is not made within one month from the date of the service of the demand notice, the Service may proceed to enforce payment under this Act; and
 - (d) an addition imposed under this subsection shall not be deemed to be part of the tax paid for the purpose of claiming relief under any of the provisions of this Act.
- (2) Any person who without lawful justification or excuse fails to pay hydrocarbon tax within the period of one month prescribed in subsection (1) (c), commits an offence under this Act and the provisions of subsection (1) (a) to (c) shall apply.
- (3) The Service may, for any good cause shown, remit the whole or any part of the additional 10% penalty and interest on the tax due under subsection (1).

293. Collection of tax after determination of objection or appeal

- (1) Where payment of hydrocarbon tax in whole or in part has been held in abeyance pending the result of a notice of objection or of appeal, the tax outstanding under the assessment as determined on such objection or appeal, as the case may be, shall be payable within one month from the date of service on the company assessed or on the person in whose name the company is assessed, of the notification of the tax payable by the Service or Tribunal.
- (2) Where such balance is not paid within one month, section 292 of this Act shall apply.

294. Suit for tax by the service

- (1) Hydrocarbon tax may be sued for and recovered in a court of competent jurisdiction at the place at which payment shall be made by the Service.

- (2) In any suit under subsection (1) the production of a certificate signed by any person duly authorised by the Service giving the name and address of the defendant and the amount of tax due by the defendant shall be sufficient evidence of the amount due.

295. Relief in respect of error or mistake

- (1) Where a person who has paid hydrocarbon tax for an accounting period alleges that any assessment made upon him or in his name for that period, was excessive by reason of some error or mistake in the accounts, particulars or other written information supplied by him to the Service for the purpose of the assessment, that person may, not later than six years after the end of the accounting period in respect of which the assessment was made, make an application in writing to the Service-
 - (a) for a relief; or
 - (b) to set-off the credit against the liability of a similar tax payable to the Service.
- (2) On receiving an application under subsection (1), the Service shall inquire into it and subject to the provisions of this section shall by way of repayment of tax give such relief or approve the set-off in respect of the error or mistake as appears to the Service to be reasonable and just.
- (3) A relief shall not be given under this section in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where the accounts, particulars or information was in fact made or given on the basis or in accordance with the practice of the Service generally prevailing at the time when the accounts, particulars or information was made or given.
- (4) In determining any application under this section, the Service shall have regard to all the relevant circumstances of the case and in particular shall consider whether the granting of relief would result in the exclusion from charge to tax of any part of the chargeable profits of the applicant and for this purpose, the Service may take into consideration the liability of the applicant and assessments made upon him in respect of other years.

296. Repayment of tax

- (1) Except as otherwise expressly provided in this Act, a claim for the repayment of any hydrocarbon tax overpaid shall not be allowed unless it is made in writing within six years next after the end of the accounting period to which it relates.
- (2) The Service shall cause to be refunded or set-off at the option of the applicant upon presentation of relevant documents evidencing the tax to be refunded.
- (3) Any tax claimed based on this section, which is proven not to be due, shall attract a penalty at the prevailing LIBOR or any other successor rate plus 10% from the date the payment or set-off was made up to the date the refund is made by the applicant.

PART IX—OFFENCES AND PENALTIES

297. Penalty for defaults

- (1) A person who fails to comply with the provisions of this Chapter or any regulation made under this Act for which no other penalty is specifically provided, shall be liable to an administrative penalty of N10,000,000, and where the default continues beyond a period stipulated by this Act or regulation, the person shall be liable to a further administrative penalty of N2,000,000 or such other sum as may by order be prescribed by the Minister of Finance, for each day the default continues.
- (2) Notwithstanding the provisions of subsection (1), a person who is found guilty of an offence under this Chapter or in a regulation made under this Act for which no other penalty is specifically provided, shall, on conviction, be liable to a fine of N20,000,000 or other sum as may be prescribed by the Minister of Finance by an order and where the offence continues beyond a period stipulated by this Act or regulation, the person shall be liable to an additional fine of N2,000,000 or such other sum as may, by order, be prescribed by the Minister of Finance for each day the default continues, or imprisonment for a term of six months.
- (3) A person who-
 - (a) fails to comply with the requirements of a notice served on him under this Chapter;
 - (b) fails to comply with section 277 of this Act,
 - (c) without sufficient cause fails to attend in answer to a notice or summons served on him under this Chapter or having attended fails to answer any question lawfully put to him, or
 - (d) fails to submit any return required to be submitted under section 277 or 281 of this Act, commits an offence.
- (4) Any violation in respect of which a penalty is provided for in subsection (1) shall be deemed to occur in Nigeria.

298. Penalty for making incorrect returns

- (1) A person who without reasonable excuse-
 - (a) makes up or causes to be made up any incorrect accounts by omitting or understating any profits or overstating any losses of which he is required under this Act to make up accounts,
 - (b) prepares or causes to be prepared any incorrect schedule or statement required to be prepared under section 277 of this Act by overstating any expenditure or overstating

any royalties or other sums or by omitting or understating any amounts repaid, refunded, waived or released, or

- (c) gives or causes to be given any false or misleading information in relation to any matter or thing affecting his liability to hydrocarbon tax, is liable to an administrative penalty of the sum of N15,000,000 or 1% of the amount of tax which has been undercharged in consequence of such incorrect account, schedule, statement or information or would have been so undercharged if the account, schedule, statement or information had been accepted as correct, and is also liable for the appropriate tax which would have been charged.
- (2) Notwithstanding the provisions of subsection (1) (c), a person who gives or causes to be given any false or misleading information in relation to any matter or thing affecting his liability to hydrocarbon tax, commits an offence and on conviction is liable to a fine of N15,000,000 or 1% of the amount of tax which has been undercharged in consequence of such incorrect account, schedule, statement or information, or would have been so undercharged if the account, schedule, statement or information had been accepted as correct and is also liable for the appropriate tax which would have been charged.
- (3) The Service may compound any offence under this Act by accepting a sum of money not exceeding the maximum fine specified for the offence and shall issue an official receipt for any money so received.

299. False statements and returns

- (1) A person who-
- (a) for the purpose of obtaining any deduction, refund, rebate, reduction or repayment in respect of hydrocarbon tax for himself or for any other person or who in any return, account, particulars or statement made or furnished with reference to tax, knowingly makes any false statement or false representation or forges or fraudulently alters or uses or fraudulently lends or allows to be used by any other person any receipt or token as evidence for payment of the tax under this Act; or
 - (b) aids, abets, assists, counsels, incites or induces any other person-
 - (i) to make or deliver any false return or statement under this Act,
 - (ii) to keep or prepare any false accounts or particulars affecting tax, or
 - (iii) unlawfully refuses or neglects to pay tax, commits an offence and is liable on conviction to a fine of N15,000,000 or 1% of the amount of tax for which the person assessable is liable under this Act for the accounting period in respect of or during which the offence was committed, or to imprisonment for six months or to both the fine and imprisonment and is also

liable for the appropriate hydrocarbon tax which would have been assessed and charged.

- (2) Notwithstanding the provisions of subsection (1), any person who does any of the acts or makes the omissions contained in subsection (1), may be liable to an administrative penalty of N15,000,000 or 1% of the amount of hydrocarbon tax for which the person assessable is liable under this Act for the accounting period in respect of or during which the act or omission occurred and shall still be liable for appropriate tax which would have been assessed and charged.

300. Penalties for offences by authorised or unauthorised persons

A person who:

- (a) being a member of the Service charged with the administration of this Act or any assistant employed in connection with the assessment and collection of the hydrocarbon tax who-
 - (i) demands from any person an amount in excess of the authorised assessment of the tax payable,
 - (ii) withholds for his own use or otherwise any portion of the amount of tax collected,
 - (iii) renders a false return, whether verbal or in writing of the amounts of tax collected or received by him, or
 - (iv) defrauds any person, embezzles any money or otherwise uses his position to deal wrongfully with the Service or any other individual; or
- (b) not being authorised under this Act, collects or attempts to collect the tax under this Act, commits an offence and is liable on conviction to a fine equivalent to 200% of the sum in question or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

301. Tax to be payable notwithstanding any proceedings for penalties

The institution of proceedings for or the imposition of a penalty, fine or term of imprisonment under this Act shall not relieve any person of liability to payment of any hydrocarbon tax for which he is or may become liable.

PART X—APPLICATION OF COMPANIES INCOME TAX TO PETROLEUM OPERATIONS

302. General requirements of companies engaged in petroleum operations to pay companies income tax

- (1) Without prejudice to Companies Income Tax Act and any other applicable law, the provisions of this Act shall apply and any company, concessionaire, licensee, lessee, contractor or subcontractor involved in the upstream, midstream or downstream petroleum operations under this Act, shall also be subject to the Companies Income Tax Act.
- (2) For the purpose of determining the value of chargeable crude oil, or chargeable gas, in relation to any accounting period, the crude oil and gas revenue of a company for that period shall be the value of any chargeable oil or chargeable gas adjusted to the measurement points, based on the-
 - (a) proceeds of all chargeable oil or gas sold by the company; and
 - (b) value of all chargeable oil or gas disposed by the company.
- (3) Subject to sections 142 (2) and 197 (2) of this Act, a person intending to be involved in more than one stream, that is upstream, midstream or downstream petroleum operations shall register and use a separate company for each stream of petroleum operations under this Act provided that, for companies with petroleum mining leases selected under section 93 (6) (b) and (7) (b) of this Act, no stamp duties and capital gains tax shall be levied by Government on such segregation.
- (4) For strategic projects in the upstream petroleum operations that seek to produce oil and natural gas to be processed or refined to finished petroleum products, and supplied in wholesale solely to the domestic market, such projects shall have the option to be established as an integrated strategic project (ISP), whereby the capital investment in the associated midstream petroleum operations as defined under this Act, can be consolidated with the upstream petroleum operations for purposes of tax, and where an ISP option is elected, the following provisions shall apply-
 - (a) arms-length transfer prices shall be established to fiscalise the hydrocarbons transferred from the upstream petroleum operations to the midstream petroleum operations; and
 - (b) capital investment in the midstream petroleum operations consolidated with upstream petroleum operations cannot be represented for capital allowances when fiscalising the income from midstream petroleum operations.
- (5) In determining the companies income tax, the hydrocarbon tax under this Act shall not be deductible.
- (6) All companies engaged in domestic midstream petroleum operations, downstream gas operations and large-scale gas utilisation industries as defined in this Act, shall be entitled to

benefit from the incentives provided under section 39 of the Companies Income Tax Act, and investors in gas pipeline will be granted an additional tax-free period of five years at the expiration of the tax-free period granted in section 39 of the Companies Income Tax Act.

- (7) Natural gas transferred or disposed from the upstream to the midstream or downstream shall be subject to tax under the Companies Income Tax Act.
- (8) Natural gas liquids and liquid petroleum gases derived from natural gas shall be subject to companies income tax.
- (9) Acquisition costs of petroleum rights shall be eligible for annual allowance at the rate of 20% with a retention value of 1% in the last year until the asset is disposed.
- (10) Capital allowances for other assets shall be granted as follows-
 - (a) upstream petroleum operations assets shall be in accordance with the Fifth Schedule to this Act; and
 - (b) midstream and downstream operations shall be in accordance with the Second Schedule to the Companies Income Tax Act.
- (11) Section 24 of the Companies Income Tax Act shall be read in conjunction with the following provisions of this Act-
 - (a) all rents and royalties the liability for which was incurred by the company during that period in respect of crude oil sold, condensate sold and natural gas sold or delivered or disposed of in any other commercial manner and where a petroleum mining lease includes payments to the Federation Account related to production sharing, profit sharing, risk service contracts or other contractual features and the company has incurred liability for such payments and such payments were made;
 - (b) any amount contributed to any fund, scheme or arrangement approved by the Commission or Authority for the purpose of providing for-
 - (i) abandonment and decommissioning,
 - (ii) petroleum host communities development trust, or
 - (iii) environmental remediation; and
 - (c) other deductions as may be prescribed by the Minister of Finance by order published in the Federal Government Gazette.
- (12) Section 27 of the Companies Income Tax Act shall be read in conjunction with the following provisions of this Act-

- (a) any expenditure for the purchase of information relating to the existence and extent of petroleum deposits, other than for the acquisition of geological, geophysical and geochemical data or information;
 - (b) any expenditure incurred as a penalty including natural gas flare fees or any such imposition relating to natural gas flare;
 - (c) production bonuses, signature bonuses paid for the acquisition of, or of rights in or over, petroleum deposits; signature bonuses or fees paid for renewing petroleum mining lease or petroleum prospecting licence or fees paid for assigning rights to another party including for marginal fields; and
 - (d) any tax inputed into a contract or an agreement on a net tax basis and paid by a company on behalf of the vendor or contractor.
- (13) Any company involved in upstream petroleum operations shall apply the accounting periods established for hydrocarbon tax on an actual year basis for its company's income tax in accordance with sections 277, 280 and 291 of this Act.
- (14) Any company involved in upstream petroleum operations that is in default of subsection (13) in relation to filing of companies income tax returns, shall be liable to pay a penalty for late filing as follows-
- (a) N10,000,000 on the first day the failure occurs and N2,000,000 for each and every subsequent day in which the failure continues; or
 - (b) other sum as may be prescribed by the Minister of Finance by order published in the Federal Government Gazette.
- (15) Offences and penalties specified under Part IX of this Chapter shall be applicable to companies income tax of upstream petroleum companies.
- (16) The tax due from a company involved in upstream petroleum operations shall in the case of –
- (a) Naira remittances, carry interest at the prevailing NIBOR plus 10% from the date when the tax becomes payable until it is paid, and
 - (b) foreign currency remittances, incur interest at the prevailing LIBOR or any successor rate plus 10% from the date when the tax becomes payable until it is paid, and the provisions of this Act relating to collection and recovery of tax shall apply to the collection and recovery of the interest.
- (17) Furthermore upstream petroleum operations shall be subject to the following provisions-

- (a) where, for any accounting period of a company, the amount of the chargeable tax for that period, calculated in accordance with this section other than this subsection, is less than the amount mentioned in paragraph (b), the company shall be liable to pay an additional amount of chargeable tax for that period equal to the difference between those two amounts;
- (b) the amount referred to in paragraph (a) is, for any accounting period of a company, the amount which the chargeable tax for crude oil or gas for that period, calculated in accordance with this section, would come to if the reference in subsection (2) (a) and (b), to the proceeds of sale or disposal were a reference to the amount obtained by multiplying the number of barrels of that crude oil or gas determined at the measurement point by the fiscal oil per barrel or fiscal gas per MMBtu;
- (c) for the purpose of paragraph (b), the relevant sum per barrel of crude oil, condensate or gas per MMBtu by a company is the fiscal oil price or fiscal gas price applicable to that crude oil or gas as may be established by the Commission;
- (d) the whole of any additional chargeable tax for crude oil or chargeable gas payable by a company by virtue of this subsection for any accounting period shall be payable concurrently with the final instalment of the chargeable tax payable for that period;
- (e) where there is no fiscal oil price or fiscal gas price established for a crude oil stream or gas, the Commission shall establish fiscal oil price or fiscal gas price for such stream and every fiscal oil or gas price established shall bear a fair and reasonable relationship-
 - (i) to the established fiscal oil or gas price of Nigerian crude oil streams or gas of comparable quality and specific gravity, or
 - (ii) where there are no such Nigerian crude oil streams or gas of comparable quality and specific gravity it shall bear a fair and reasonable relationship to the official selling prices at main international trading centers for crude oil or gas of comparable quality and gravity, due regard being had in either case to freight differentials and other relevant factors; and
- (f) where any crude oil or gas, which in relation to a particular company is its chargeable oil or chargeable gas, is exported from Nigeria by another company, that crude oil or gas shall for the purpose of this section be deemed to be exported from Nigeria by that particular company.

PART XI—GENERAL PROVISIONS

303. General application of this Part and other matters

- (1) The provisions of this Act shall not apply to holders of an oil prospecting licence or oil mining lease who do not enter into a conversion contract until the termination or expiration of the respective oil prospecting licence or oil mining lease save for the provisions of section 311 and

paragraphs 10 and 11 of the Seventh Schedule to this Act which shall apply to licences and leases awarded to indigenous Nigerian companies on a sole risk basis under the Petroleum Act, on which the Government has successfully exercised its back-in rights prior to the effective date of this Act but any renewal of an oil mining lease shall be based on this Act.

- (2) The fiscal provisions of this Act are the base terms that are applicable and the Commission may under section 74 (2) of this Act conduct a licensing round whereby the bid parameter is a higher royalty, profit oil share or other fiscal features in order to ensure that the Government receives the full market value for each block.

304. Regulations, rules and forms

- (1) Where matters relate to hydrocarbon tax and companies income tax, the Minister of Finance may make regulations for the carrying out of the provisions of this Act and the Service may make rules and specify the form of returns, claims, statements and notices under this Act.
- (2) Where matters relate to fees, rents, royalties and payments to Government other than taxes and duties, the Commission may make regulations and rules generally for the carrying out of the provisions of this Act.
- (3) Where matters relate to the environment, the Commission and Authority shall have responsibility over all environmental matters in respect of upstream petroleum operations and midstream and downstream respectively except in relation to environmental impact assessment which shall be in accordance with applicable laws.

305. Fiscal stabilisation

Fiscal stabilisation clauses contained in any production sharing contract or other contract entered into after the commencement of this Act shall not be applicable to the fiscal provisions listed in this section, regardless of whether these changes affect the contractor favorably or unfavorably, if changes are being made in a manner that is not discriminatory to the petroleum industry or the contractor and the respective fiscal provisions are-

- (a) generally applicable taxes, such as withholding taxes, companies income tax, tertiary education tax and VAT;
- (b) levies, taxes or payments to comply with modern principles in respect of environment, labour laws, health and safety; and
- (c) new taxes, levies or duties to implement Nigeria's commitments with respect to climate change under the United Nations Framework Convention on Climate Change and other related international agreements.

306. Royalty

All production of petroleum, including production tests shall be subject to royalties as provided in the Seventh Schedule to this Act.

CHAPTER 5—MISCELLANEOUS PROVISIONS

307. Legal proceedings

- (1) The provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against the Commission or the Authority, the Commission Chief Executive or the Authority Chief Executive, any commissioner or director, officer or employee of the Commission or Authority.
- (2) No action, claim, proceeding or suit shall lie or be commenced against the Commission or the Authority, the Commission Chief Executive or Authority Chief Executive, any commissioner or director or any other employee or officer of the Commission or Authority, for any act done, attempted to be done or omitted to be done under this Act or any other law or enactment or of any public duty or authority in respect of any alleged neglect or default in the execution of this Act or any other law or enactment, duty or authority or be instituted in any court unless it is commenced within three months after the accrual of any cause of action in respect of any such act, neglect or default and provided such act or omission was not done in good faith.

308. Pre-action notice

- (1) A suit shall not be commenced against the Commission or Authority or any officer of the Commission or Authority, before the expiration of a period of one month after a written notice of the intention to commence the suit has been served on the Commission or the Authority.
- (2) The notice referred to in subsection (1) shall state the cause of action, the particulars of claim, the name and address of the claimant and the reliefs sought.
- (3) A notice, summons or other document required or authorised to be served on the Commission or Authority under this Act or any other law or enactment, may be served by delivering it to the office of the Commission Chief Executive or the Authority Chief Executive.
- (4) An order for execution or attachment of any property of the Commission or Authority shall not be issued unless a three months' notice of the intention to commence execution process has been given to the Commission or Authority.

309. Consequential amendments

Subject to the Constitution of the Federal Republic of Nigeria, 1999, upon the commencement of this Act, where the provisions of any other enactment or law except the Nigeria Oil and Gas Industry Content Development Act are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provisions of that other enactment or law shall, to the extent of that inconsistency, be void in relation to matters provided for in this Act.

310. Repeals

- (1) From the effective date of this Act the following enactments and regulations are repealed-

- (a) Associated Gas Reinjection Act, 1979, Cap. A25, Laws of the Federation of Nigeria, 2004, and its Amendments;
 - (b) Hydrocarbon Oil Refineries Act No. 17 of 1965, Cap. H5, Laws of the Federation of Nigeria, 2004;
 - (c) Motor Spirits (Returns) Act, Cap. M20, Laws of the Federation of Nigeria, 2004;
 - (d) Nigerian National Petroleum Corporation (Projects) Act No. 94 of 1993, Cap. N124, Laws of the Federation of Nigeria, 2004;
 - (e) Nigerian National Petroleum Corporation Act (NNPC) 1977 No. 33, Cap. N123, Laws of the Federation of Nigeria as amended, when NNPC ceases to exist under section 54 (3) of this Act;
 - (f) Petroleum Products Pricing Regulatory Agency (Establishment) Act No. 8, 2003;
 - (g) upon the completion of the conversion process under section 92, the Petroleum Profit Tax Act, Cap. P13, LFN, 2004, provided the repeal shall apply from the effective date to any new acreage granted under this Act; and
 - (h) upon the completion of the conversion process under section 92, the Deep Offshore and Inland Basin Production Sharing Contract Act, 2019, as amended, provided the repeal shall apply from the effective date to any new acreage granted under this Act.
- (2) With respect to the Petroleum Equalisation Fund, the Authority as of the Effective Date shall be in charge of –
- (a) the collection of net surplus revenues from oil marketing companies shall cease, except for the collection of unpaid net surplus revenues earned prior to the effective date; and
 - (b) the payment for reimbursements to oil marketing companies shall cease, except for possible remaining payment obligations incurred prior to the effective date.
- (3) Where the Petroleum Equalisation Fund is insufficient to make the payments under subsection (2) (b), the Authority may prorate the amounts payable based on the ratio between the funds remaining and the outstanding payables, provided that where the Petroleum Equalisation Fund is in a deficit, the proration shall be zero, and oil marketing companies shall have no claim as to further outstanding amounts.
- (4) Any amount remaining in the Petroleum Equalisation Fund after the completion of the transactions under subsections (2) (a), (b) and (3) shall be transferred to the Midstream and Downstream Gas Infrastructure Fund.

311. Savings provisions

- (1) Any Act, subsidiary legislation or regulation, guideline, directive and order made under any principal legislation repealed or amended by this Act, shall, in so far as it is not inconsistent with this Act, continue in force mutatis mutandis as if they had been issued by the Commission or Authority under this Act until revoked or replaced by an amendment to this Act or by subsidiary legislation made under this Act and shall be deemed for all purposes to have been made under this Act.
- (2) Any oil prospecting licence or oil mining lease granted under the Petroleum Act, that is subsisting as at the effective date of this Act shall continue to have effect, subject to the following terms and conditions-
 - (a) with respect to renewed leases renegotiated production sharing contracts within the period specified in this section, the following conditions shall apply,-
 - (i) where negotiations of the contracts are continuing upon the effective date of this Act, such contracts shall be signed within one year of the effective date and in the event of failure to complete the negotiations within one year of the effective date, such contract shall be deemed to conform to the provisions of this Act at the expiration of the lease,
 - (ii) where the contracts were or are signed by NNPC, the leases shall be assigned to NNPC Limited without prior approval of the contractor and NNPC Limited shall continue its role as concessionaire under such leases, NNPC shall by written notice notify the contractor of such assignment,
 - (iii) the renewed leases renegotiated production sharing contracts, shall not feature any investment tax credits unless such investment tax credits are carried forward as part of a renegotiation of a production sharing contract within the period specified in this section and shall feature a cost oil limit of not more than 60% of the total oil production, a minimum of 55% haircut on disputed amount and for the purpose of determining the profit oil share based on cumulative production, the production from the total production of all production areas selected under section 93 of the Act shall be used,
 - (iv) the contracts and leases shall continue to be subject to the legislation under subsection (9), provided that such leases shall be subject to section 93 of this Act and in this respect the conversion date for the purpose of the interpretation of section 93 of this Act shall be the signing date of such renegotiated production sharing contracts, and
 - (v) upon expiration or terminations, the leases and renegotiated production sharing contracts can only be renewed on the basis of the provisions of this Act;
 - (b) any oil prospecting licence and oil mining lease that is being converted shall be converted under section 92 (1) - (5) and (7) of this Act;

- (c) with respect to other oil prospecting licences and oil mining leases that do not wish to convert under section 92 (6), section 303 (2) of this Act and subsection (9) of this section shall apply and the domestic gas price that is the applicable gas prices established prior to the effective date of this Act and for licence and leases awarded to indigenous Nigerian companies on a sole risk basis under the Petroleum Act on which the Government has successfully exercised its back-in rights prior to the effective date of this Act, section 92 (5) of this Act shall apply save for the royalty which shall be 0% per field for the period of five years from the date of commencement of the field production including all relevant accounting period prior to the effective date and section 311 (9) (d) of this Act, any Act, subsidiary legislation or regulation, guideline, directive or order saved under this Act shall be deemed amended accordingly; and
- (d) contractors of NNPC, oil prospecting licences and oil mining leases shall be subject to sections 232 and 233 of this Act.
- (3) Any other licence, lease, certificate, authority or permit which was issued by the Department of Petroleum Resources, Petroleum Products Pricing and Regulatory Agency or Petroleum Equalisation Fund, as the case may be and which had effect immediately before the effective date shall continue to have effect, mutatis mutandis, for the remainder of its period of validity as if it had been issued by the Commission or Authority.
- (4) Any tariff, price, levy, or surcharge which was payable to the Department of Petroleum Resources, Petroleum Products Pricing and Regulatory Agency or Petroleum Equalisation Fund prior to the effective date shall continue in force until the expiration of the term of the said tariff, price, levy, or surcharge, or until alternative provisions are made under this Act or any regulations made under it, whichever is earlier.
- (5) Pending the decision of the Authority under sections 125 (6) and 174 (6) of this Act, the existing licence, permit or right shall continue in force as if it had been issued under this Act.
- (6) Any other permit or other right in respect of any sector of the petroleum industry to which subsections (2), (3) and (4) do not apply and that has been granted by the Department of Petroleum Resources, Petroleum Pricing and Product Regulatory Agency or Petroleum Equalisation Fund, as the case may be, and which is still in existence on the effective date, shall continue in force for the remainder of its duration as if it had been issued under this Act.
- (7) With respect to subsection (4), any payments under Chapter 2 of this Act shall be applicable to the respective licensees and holders of permits and rights.
- (8) Within three months from the effective date, the Minister of Petroleum on the advice of the Commission or Authority, may make any further transitional and savings provisions that are necessary or desirable, provided that such provisions are consistent with the transitional and savings provisions in this Act.

(9) Notwithstanding the provisions of section 310 of this Act, the following laws shall be saved until the termination or expiration of all oil prospecting licences and oil mining leases under subsection (2) (c)-

(a) Petroleum Act, Cap. P10, Laws of the Federation of Nigeria, 2004;

(b) Petroleum Profit Tax Act, Cap. P13, Laws of the Federation of Nigeria, 2004;

(c) Oil Pipelines Act, Cap. 07, Laws of the Federation of Nigeria, 2004 and any subsidiary legislation shall, in so far as it is consistent with this Act, remain in operation until it is repealed or revoked and shall be deemed for all purposes to have been made under this Act;

(d) Deep Offshore and Inland Basin Production Sharing Contracts Act, Cap. D3, Laws of the Federation of Nigeria, 2004 and its Amendment; and

(e) any other law or regulations that are consistent with the principles of section 92 (6) of this Act.

(10) Subject to sections 125 (6) and 174 (6) of this Act, parties to gas sales agreements related to domestic sales or exports entered into prior to the effective date shall be entitled to continue such agreements unaltered until the termination of such agreements, provided, however, that such agreements shall be submitted for review to the Authority and the Commission and where so ordered by the Authority or Commission, as the case may be, amendments shall be made in such agreements to comply with the Act.

312. Transfer of assets and liability to the Commission

(1) The Commission shall be vested with all assets, funds, resources and other movable and immovable properties which immediately before the effective date were held by the Petroleum Inspectorate or the Department of Petroleum Resources.

(2) The rights, interests, obligations and liabilities of the Petroleum Inspectorate and Department of Petroleum Resources existing immediately before the effective date under any contract or instrument or law or in equity are assigned to and vested in the Commission.

(3) Any contract or instrument covered by subsection (2) shall be of the same force and effect against or in favour of the Commission and shall be enforceable as fully and effectively as if instead of the Petroleum Inspectorate or Department of Petroleum Resources, the Commission had been named therein or had been a party thereto.

(4) The Commission shall be subject to all the obligations and liabilities to which the Petroleum Inspectorate and Department of Petroleum Resources were subject immediately before the effective date and all other persons shall as from the effective date have the same rights, powers and remedies against the Commission as they had against the Petroleum Inspectorate or Department of Petroleum Resources immediately before the effective date.

313. Transfer of employees and conditions of service

- (1) The Authority shall be vested with all assets, funds, resources and other movable and immovable properties, which immediately before the effective date were held by the Petroleum Pricing and Product Regulatory Agency, the Petroleum Equalisation Fund (Management Board) and the relevant assets, funds, resources and other movable and immovable properties held by Department of Petroleum Resources, the Petroleum Pricing and Product Regulatory Agency, and the Petroleum Equalisation Fund (Management Board).
- (2) The rights, interests, obligations and liabilities of the Department of Petroleum Resources, the Petroleum Pricing and Product Regulatory Agency, and the Petroleum Equalisation Fund (Management Board) existing immediately before the effective date under any contract or instrument or law or in equity are assigned to and vested in the Authority.
- (3) Any contract or instrument covered by subsection (2) shall be of the same force and effect against or in favour of the Authority and shall be enforceable as fully and effectively as if instead of the Department of Petroleum Resources, the Petroleum Pricing and Product Regulatory Agency, and the Petroleum Equalisation Fund (Management Board) had been named therein or had been a party thereto.
- (4) The Authority shall be subject to all the obligations and liabilities to which the Petroleum Pricing and Product Regulatory Agency, the Petroleum Equalisation Fund (Management Board) and the relevant divisions of Department of Petroleum Resources, were subject immediately before the effective date and all other persons shall as from the effective date have the same rights, powers and remedies against the Authority as they had against the Petroleum Pricing and Product Regulatory Agency, the Petroleum Equalisation Fund (Management Board) and the relevant divisions of Department of Petroleum Resources immediately before the effective date.

314. Transfer of employees and conditions of service

- (1) From the effective date, employees in the relevant divisions in the Petroleum Inspectorate or the Department of Petroleum Resources shall be employees of the Commission on terms no less favourable to those in effect immediately prior to such transfer, and all years of service with the Petroleum Inspectorate or the Department of Petroleum Resources, as applicable, shall be deemed to be years of service qualifying for employment related entitlements under any applicable law.
- (2) The Commission shall assume and continue to fulfil all statutory obligations in respect of pension schemes to which the Petroleum Inspectorate or the Department of Petroleum Resources, as applicable, was obliged in respect of its employees, prior to the effective date.
- (3) From the effective date, employees in the relevant divisions of the Department of Petroleum Resources, the Petroleum Pricing and Product Regulatory Agency, and the Petroleum Equalisation Fund (Management Board), shall be employees of the Authority on terms no less

favourable to those in effect immediately prior to the effective date, and all years of service with the Department of Petroleum Resources, the Petroleum Pricing and Product Regulatory Agency or the Petroleum Equalisation Fund (Management Board), as applicable, shall be deemed to be years of service qualifying for employment-related entitlements under any applicable law.

- (4) The Authority shall assume and continue to fulfil all statutory obligations in respect of pension schemes to which the Department of Petroleum Resources, the Petroleum Pricing and Product Regulatory Agency and the Petroleum Equalisation Fund (Management Board), as applicable, was obliged in respect of its employees, prior to the effective date.

315. Movement of staff of the institutions

As part of the implementation process of sections 313 and 57 of this Act, the Minister may within 24 months of the effective date cause an inter-agency transfer of any staff of the institutions listed below to the Commission, the Authority or NNPC Limited based on skills and competence requirements of the new institutions, if the skills and competence of the said staff are most suitable in any of the successor institutions during the implementation process-

- (a) Department of Petroleum Resources;
- (b) Nigerian National Petroleum Corporation and any of its subsidiaries;
- (c) Petroleum Equalisation Fund;
- (d) Petroleum Inspectorate; and
- (e) Petroleum Products Pricing and Regulatory Authority.

316. Transfer of existing host communities development projects and host communities development schemes

- (1) Every settlor shall transfer any existing host communities development project or scheme under its corporate social responsibility or memorandum of understanding or any other agreement to a host communities development trust established under this Act.
- (2) Every applicable settlor shall notify the Commission or Authority, as the case may be, upon completion of any transfer under subsection (1) to any one or more host communities development trusts of any of its existing host communities development projects or schemes.
- (3) Any financial contribution made by a settlor from the effective date until the date falling 12 months after the effective date to any ongoing host communities development project or scheme in accordance with their terms, shall be deemed to constitute a contribution made by such holder or holder nominee under section 240 (2) of this Act.

317. Transitional and savings provisions

- (1) Anything made or done, or having effect as if made or done, before the effective date of this Act under or pursuant to any provision of the Petroleum Act, the Petroleum Profit Tax Act and the Deep Offshore and Inland Basin Production Sharing Contract Act by the Service and having any continuing or resulting effect with respect to the taxation of the profits of a company or any matter connected to it, shall be treated and for all purposes shall have effect as if it were made or done by the Service under the corresponding provisions of this Act.
- (2) All rules, orders, notices or other subsidiary legislation made under the Petroleum Act, the Petroleum Profits Tax Act, and the Deep Offshore and Inland Basin Production Sharing Contract Act shall continue to have effect as if made under the corresponding provisions of this Act.
- (3) All references in any other enactment to provisions of the Petroleum Act, the Petroleum Profits Tax Act and the Deep Offshore and Inland Basin Production Sharing Contract Act shall be construed as references to the corresponding provisions of this Act.
- (4) With respect to petroleum mining leases selected under section 93 (6) (b) and (7) (b) of this Act, any capital allowances existing at the effective date for the related oil mining leases shall be carried over to the selected petroleum mining leases, provided the allowances relate to upstream petroleum operations and do not include investment tax allowances and investment tax credits.
- (5) Subject to section 303 (1) of this Act, the provisions of Chapter 4, Parts II and X of this Act shall apply upon the commencement of the first accounting period following the effective date.
- (6) From the effective date, the Government on behalf of the Federation may request the services of NNPC Limited as supplier of last resort to ensure adequate supply and distribution of premium motor spirit (PMS) for a period not exceeding six months and all associated costs shall be for the account of the Federation.
- (7) The Minister shall set forward a clear transition plan within 60 days of the effective date of the Act to prevent disruptions of the industry operations.
- (8) The Authority may apply the Backward Integration Policy in the downstream petroleum sector to encourage investment in local refining.
- (9) Pursuant to subsection (8), licence to import any product shortfalls may be assigned to companies with active local refining licences or proven track records of international crude oil and petroleum products trading.
- (10) Import volume to be allocated between participants shall be based on criteria to be set by the Authority taking into account the respective refining output in the preceding quarter, share of active wholesale customers competitive pricing and prudent supply, storage and distribution track records.

(11) To safeguard the health of Nigerians, imported petroleum products shall conform to the Afri-5 Specification (50 ppm Sulphur) as per the ECOWAS declaration of February, 2020 on adoption of the Afri-Fuels Roadmap or as may be prescribed by regulation.

318. Interpretation

In this Act-

“accounting date” means the date on which a company usually prepares its accounting statement;

“accounting period” in relation to a company engaged in upstream petroleum operations, means –

- (a) a period of one year commencing on 1st January and ending on 31st December of the same year,
- (b) any shorter period commencing on the day the company first makes a sale or bulk disposal of chargeable oil, domestic, export or both, and ending on 31st December of the same year, or
- (c) any period of less than a year being a period commencing on 1st January of any year and ending on the date in the same year when the company ceases to be engaged in petroleum operations, and in the event of any dispute with respect to the date of the first sale of chargeable oil above or with respect to the date on which the company ceases to be engaged in petroleum operations, the Commission shall determine the same and no appeal shall lie;

“Act” means the Petroleum Industry Act, 2021;

“adjusted profits” means adjusted profit as stated in section 262 of this Act;

“advisory committee” has the meaning given to it in section 249 of this Act;

“affiliate” means the relationship that exists between two persons when one controls or is controlled by, an entity which controls, the other person, where ‘control’ means the direct or indirect ownership of more than 50% of the voting rights in a company, partnership or legal entity;

“aggregate gas price” means the gas price determined under section 167 (4) of this Act;

“appraisal well” means a well that in the opinion of the Commission is aimed at determining the size, distribution, characteristics and commerciality of a petroleum discovery;

“area of operation” means the territory which hosts a lessee’s or licensee’s operational or designated facilities and any other ancillary facilities related to upstream and midstream petroleum operations;

“assessable profit” means assessable profit as stated in section 262 of this Act;

“associated gas” means-

- (a) natural gas, commonly known as gas-cap gas, which overlies and is in contact with crude oil in a reservoir; and
- (b) solution gas dissolved in crude oil in a reservoir and emerging from the fluid as pressure drops;

“authorisation” means approval issued by the Commission or Authority for an activity in the petroleum industry;

“Authority” means the Nigerian Midstream and Downstream Petroleum Regulatory Authority” as provided for in this Act;

“Authority Fund” means the Fund established under section 47 of this Act;

“barrel” means a barrel of 42 United States gallons;

“Board” means the governing board of the Commission, Authority, NNPC Limited or an incorporated joint venture company (IJVC);

“Board of Trustees” means the governing board of the trust established under section 242 of this Act;

“bulk gas storage licence” means a licence granted under section 132 of this Act;

“capital fund” means the fund available to the Board of Trustees of a host communities development trust for communities development projects and other matters on behalf of the holder or holders as provided for in this Act;

“chargeable oil” means crude oil, condensate or natural gas liquids produced upstream of the measurement point as provided for under section 260 (1) (a) of this Act;

“chargeable profit” means chargeable profit as stated in section 262 of this Act;

“chargeable tax” means chargeable tax as stated in section 267 of this Act;

“chargeable volume” in relation to a company engaged in upstream petroleum operations means the chargeable volume as set out in paragraph 7 of the Seventh Schedule to this Act;

“commercial discovery” means a discovery of crude oil, natural gas or condensates within a petroleum prospecting licence or petroleum mining lease which can be economically developed in the opinion of the licensee or lessee after consideration of all relevant economic factors normally applied for the evaluation and development of crude oil, natural gas or condensate;

“Commission” means the Nigerian Upstream Petroleum Regulatory Commission established under this Act;

“common carrier” means a transportation pipeline which is operated on an open access basis;

“Commission Fund” means the fund established under section 24 of this Act;

“company” means in this Act, any company or corporation, other than a corporation sole, incorporated under the Companies and Allied Matters Act, Act No. 3, 2020;

“condensate” means a portion of natural gas of such composition that are in the gaseous phase at temperature and pressure of the reservoirs, but that, when produced, are in the liquid phase at surface pressure and temperature;

“connection agreement” means an agreement setting out the terms on which individual, physical connections to the transportation pipeline, transportation network or gas distribution network will be

effected and matters such as the configuration, pressure, technical parameters and cost of the connection;

“Constitution” means the Constitution of the Federal Republic of Nigeria, 1999, Cap. C23, Laws of the Federation of Nigeria, 2004;

“conversion contract” means a contract under section 92 of this Act;

“conversion date” means the date under section 92 of this Act;

“Corporate Affairs Commission” means the Corporate Affairs Commission established under the Companies and Allied Matters Act, Act No. 3, 2020;

“corrupt practices and money laundering laws” means-

- (a) the laws of the Government in respect of bribery, kickbacks and corrupt business practices,
- (b) the Foreign Corrupt Practices Act of 1977 of the United States of America (Pub. L. No. 95-213 §§ 101-104 et. seq.),
- (c) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on 17 December, 1997, which entered into force on 15 February, 1999, and the Convention’s Commentaries,
- (d) the United Kingdom Bribery Act, 2010, and
- (e) any other law of general application relating to bribery, kickbacks or corrupt business practices;

“Council” means the Governing Council established under section 52 (3) of this Act;

“crude oil” means petroleum, which is in liquid conditions upon production from a reservoir either in its natural state or after the extraction of water, sand or other foreign substance from it, but before any such oil has been refined or otherwise treated, other than oil extracted by destructive distillation from coal, bituminous shales or other stratified deposits;

“crude oil refiner” means the holder of a crude oil refining licence under section 183 of this Act;

“customary court” means a customary court established by the applicable laws of a State of the Federation or the Federal Capital Territory;

“customer client” means a wholesale customer of the strategic sector who is a client of the domestic gas aggregator making use of the escrow account mechanism;

“customer client volume” is the volume of natural gas that is paid for by a customer client for the benefit of a specific producer client into the escrow account of the domestic gas aggregator in any one month;

“customer protection” means the standards, practices and service protections for customers including, those relating to pricing, service quality and standards, billing practices, performance reporting and any regulations of the Commission and Authority that provide such protections;

“decommissioning and abandonment” means the approved process of cessation of operations of crude oil and natural gas wells, installations, plants and structures, including shutting down an installation’s operations and production, total or partial removal of installations and structures where applicable, chemicals and all such other materials handling, removal and disposal of debris and removed items, environmental restoration of the area after removal of installations, plants and structures, and ‘decommission’ has a corresponding meaning;

“decommissioning and abandonment fund” has the meaning given to it in section 233 of this Act;

“decommissioning and abandonment plan” means the plan to be submitted in the field development plan under section 79 (2) for upstream petroleum operations and under section 111 (3) of this Act for midstream petroleum operations;

“deep offshore” means any area within the territorial waters, continental shelf or exclusive economic zone offshore of Nigeria having a water depth in excess of 200 meters;

“deep rights” means petroleum rights vested in the Government after relinquishment under section 88 (5) (b) of this Act;

“Department of Petroleum Resources” means the Department of Petroleum Resources of the Federal Ministry of Petroleum Resources;

“designated facilities” means petroleum crude oil and natural gas transportation pipelines, bulk storage tank farms, refineries, and gas processing plants in midstream petroleum operations and petrochemical plants;

“distribution pipeline” means a low-pressure pipeline for the purpose of conveying natural gas or petroleum products to customers;

“disposal” and “disposed of” in relation to chargeable oil owned by a company engaged in petroleum operations, means-

(a) delivery or export, without sale, of chargeable oil to an affiliate or other company, and

(b) chargeable oil delivered or transferred, without sale, to facilities used for midstream operations;

“domestic base price” means the price determined under the Third Schedule to this Act;

“domestic crude oil supply obligation” means the obligations of an upstream crude oil producer to dedicate a specific volume of crude oil towards the domestic refineries as stipulated in section 109 of this Act;

“domestic gas aggregator” means a licensee of a domestic gas aggregation licence;

“domestic gas aggregation licence” means a licence granted under section 153 of this Act;

“domestic gas demand requirement” means an aggregate of the volume of natural gas required to meet the natural gas demand for strategic sectors within the domestic economy for a specified period under section 173 of this Act;

“domestic gas delivery obligation” means the obligations of a lessee producing natural gas to dedicate and deliver to a transfer point a specific volume of natural gas towards meeting the domestic gas demand requirement, as stipulated in section 110 of this Act;

“downstream gas operations” means all activities entered into for the purpose of, distribution and supply of natural gas to retail customers, city gate reception terminals for natural gas, stations for the distribution, marketing and retailing of natural gas;

“downstream petroleum products operations” means all activities entered into for the purpose of distribution and supply of petroleum products to retail customers, tank farms for distribution of petroleum products, and stations for the distribution, marketing and retailing of petroleum products;

“downstream petroleum operations” means downstream gas operations and downstream petroleum products operations;

“effective date” means the date on which this Act comes into force;

“exploration well” means a well that in the opinion of the Commission is aimed at discovering petroleum in a separate field in which petroleum has not been previously discovered;

“domestic base price” means the price determined under subsection 167 (1) of this Act;

“Federal High Court” means the Federal High Court established by section 249 of the Constitution of the Federal Republic of Nigeria, 1999;

“Federation Account” means the Federation Account stated in section 162 of the Constitution of the Federal Republic of Nigeria, 1999;

“field development plan” means a field development plan as specified under section 79 (2) of this Act;

“field” includes an area consisting of a single reservoir or multiple reservoirs all grouped on, or related to, the same geological structural feature, stratigraphic condition, a combination of both and refers to the underground productive formations or their vertical projection to the surface;

“fiscal gas price” means the price established in paragraph 8 (3) of the Seventh Schedule to this Act;

“fiscal oil price” means the price established in paragraphs 8 (1) and (2) of the Seventh Schedule to this Act;

“force majeure” includes delays or inability to perform any obligations under this Act (other than a payment obligation), due to any event beyond the reasonable control of a person, and the event may be, but is not limited to, any act, event, happening, or occurrence due to natural causes, and acts or perils of navigation, fire, hostilities, war (declared or undeclared), blockade, labour disturbances, strikes, riots, insurrection, civil commotion, quarantine restrictions, epidemics, storms, floods, earthquakes, accidents, blowouts or lightning and an event of force majeure shall not include changes in the laws of Nigeria or any political subdivision thereof or any acts or orders of Government, any minister, ministry, department, subdivision, agency, authority, council, committee, or other constituent element thereof, or any corporation owned or controlled by any of the foregoing, where operations are delayed, curtailed or prevented by force majeure, then the time for carrying out the obligation and duties thereby affected, and rights and obligations hereunder, shall be extended for a period equal to

the period thus involved provided that such period shall not exceed three years in total after which each party can terminate the respective licence or lease;

“frontier acreages” means any or all acreages in an area on land in Nigeria defined as a frontier in a regulation issued by the Commission;

“frontier basin” means basins where hydrocarbon exploration activities have not been carried out or previous commercial discovery oil and gas have not been made or an area that is undeveloped and includes Anambra, Dahomey, Bida, Sokoto, Chad and Benue trough or as may be declared by the Commission through a regulation;

“frontier exploration fund” means the fund established in section 9 (3) of this Act;

“fund manager” means a person or company appointed by the Board of Trustees to manage and invest the reserve fund established under the provisions of Chapter 3 of this Act for the benefit of the trust;

“gas distribution licence” means a licence for the distribution of natural gas through a low-pressure pipeline system in a specific geographical area under section 148 of this Act;

“gas distribution network” means a set of interconnected distribution pipelines for natural gas;

“gas distributor” means the holder of a gas distribution licence;

“gas processing licence” means a licence granted under section 129 of this Act;

“gas retailer” means a holder of a retail gas supply licence under section 146 of this Act;

“gas transportation network” means a set of interconnected gas transportation pipelines in a particular geographical area;

“gas transportation network operator licence” means a licence to operate a gas transportation network under section 138 of this Act;

“gas transportation network operator” means the holder of a gas transportation network operator licence;

“gas transportation pipeline” means a pipeline for the transportation of natural gas;

“gas transportation pipeline licence” means a licence for a gas transportation pipeline granted under section 135 of this Act;

“good international petroleum industry practices” means those uses and practices that are, at the time in question, generally accepted in the international petroleum industry as being good, safe, economical, environmentally sound and efficient in petroleum operations and should reflect standards of service and technology that are either state-of-the-art or otherwise appropriate to the operations in question and should be applied using standards in all matters that are no less rigorous than those in use by petroleum companies in global operations;

“Government” means the Federal Government of Nigeria;

“host communities” means communities situated in or appurtenant to the area of operation of a settlor, and any other community as a settlor may determine under Chapter 3 of this Act;

“host communities development plan” has the meaning given to it in section 252 of this Act;

“host communities development trust” has the meaning given to it in section 235 (1) of this Act;

“host communities development trust fund” means the fund established under section 240 (1) of this Act;

“host communities needs assessment” has the meaning given to it in section 251 (1) of this Act;

“large-scale gas utilisation industries” means-

(a) large-scale industries that use natural gas as a feedstock such as gas-to-liquid plants, petrochemical industries and fertiliser plants; and

(b) mini-LNG plants, power plants and such other industries as defined in regulations;

“lease” means a petroleum mining lease;

“lessee” means a holder of a lease;

“LIBOR” means London Interbank Offered Rate;

“licence” means a licence issued by the Commission or Authority in respect of any applicable upstream, midstream or downstream petroleum operations;

“licensee” means a holder of a licence;

“licensing round guidelines” means guidelines that are established by the Commission to govern the process of issuing licences or leases during a licensing round;

“liquefied natural gas” or “LNG” means natural gas in liquid form through condensation at close to atmospheric pressure and at a temperature of approximately minus 162 degrees celsius;

“liquefied petroleum gas” or “LPG” means mixtures of propane and butane and small concentrations of other gases which are gaseous under room temperature and pressure but are liquefied by applying pressure;

“local distribution zone” means an authorised area as specified in regulations, within which one gas distributor may operate;

“loss” means a loss ascertained in like manner as an adjusted profit;

“management committee” means the committee set up under section 247 of this Act;

“marginal field” means a field or discovery which has been declared a marginal field prior to 1st January 2021;

“marketable natural gas” means natural gas which meets specifications determined by the Authority for distribution to wholesale customers and retail customers-

(a) for use as a domestic, commercial and industrial fuel; and

(b) as feedstock or industrial raw material;

“marketable natural gas delivery point” means a point where marketable natural gas is made available to customers, at the exit of a gas processing plant or gas conditioning plant or at a measurement point, or such other location immediately downstream of a facility in which such natural gas has been produced, processed, conditioned or treated in order to produce marketable natural gas;

“measurement point” means-

- (a) a point determined in the field development plan under section 79 (2) of this Act, where petroleum is being measured and its value is determined for royalty purposes,
- (b) where the point has not been determined, a point directly downstream of the flow station in the petroleum mining lease, and
- (c) where measurements take place outside the petroleum mining lease, a deemed measurement point in the petroleum mining lease based on a calculation procedure approved by the Commission adjusting from the points where petroleum is being measured;

“midstream and downstream gas infrastructure fund” means the fund established under section 52 of this Act;

“midstream and downstream gas operations” means activities downstream of the measurement points of petroleum mining leases, whether or not related to the petroleum mining lease, with respect to the construction and operation of natural gas transport or transmission pipelines, including the related compressor stations, construction and operations of facilities to compress, transport and deliver compressed natural gas (CNG); construction and operations of gas processing facilities and central processing facilities, producing ethane, propane, butane and natural gas liquids and marketable natural gas; construction and operation of underground or above ground facilities for the storage of natural gas, ethane extraction plants, construction and operation of gas to liquids (GTL) plants, construction and operation of lubricant, petrochemical and fertiliser plants, construction and operation of LNG plants, and related LNG terminals as well as storage and transport of LNG, acquisition, operation or chartering of LNG tankers for coastal and marine transportation, purchase and sale, trading, bartering, aggregating and marketing of natural gas transported by pipelines, compressed natural gas, LNG, methane, ethane, propane, butane, natural gas liquids and liquids from GTL plants with respect to wholesale customers and gas distributors and related administration and overhead;

“midstream petroleum liquids operations” means activities downstream of the measurement points of petroleum mining leases, whether or not related to the petroleum mining lease, with respect to the construction and operation of facilities for upgrading of heavy oil, construction and operation of lubricant, petrochemical and fertiliser plants, construction and operation of petroleum liquids transport pipelines, including the related pumping stations; acquisition, operation, leasing, rental or chartering of barges, coastal or ocean-going tankers, railcars and trucks for the transport of petroleum liquids, construction, leasing and operation of tank farms and other storage facilities and export terminals for petroleum liquids, construction and operation of refineries, purchase and sale, trading, bartering, marketing of petroleum liquids and related administration and overhead;

“midstream and downstream petroleum operations” means midstream petroleum liquids operations and midstream and downstream gas operations;

“Minister of Petroleum” or “Minister” means the Minister of Petroleum Resources or any person designated by the President as having responsibility for overseeing the Petroleum Industry;

“Ministry of Environment” means the Federal Ministry in charge of environmental matters;

“Ministry of Finance” means the Federal Ministry in charge of finance matters;

“Ministry of Finance Incorporated” means the corporation sole established by the Ministry of Finance Incorporated Act, Cap. M15, Laws of the Federation of Nigeria, 2004;

“MMBtu” means millions of British thermal units;

“model contract” means a contract under section 85 of this Act;

“model lease” means a standard petroleum mining lease with terms and conditions adopted for a specific licensing round and may contain contractual provisions in a model contract attached to or incorporated in the model lease;

“model licence” means a standard petroleum prospecting licence with terms and conditions adopted for a specific licensing round and may contain contractual provisions in a model contract attached to or incorporated in the model licence;

“National Data Repository” means national petroleum data bank as defined in the National Data Repository Regulation, 2007 and its amendment;

“National Salaries, Incomes and Wages Commission” means the National Salaries, Incomes and Wages Commission established by section 1 of the National Salaries, Incomes and Wages Commission Act, Cap. N72, Laws of the Federation of Nigeria, 2004;

“national strategic stock” means the reserve of petroleum products kept in certain storage depots and facilities by the Government or on behalf of the Government to provide for emergency;

“natural gas” means all gaseous hydrocarbons, and all substances contained in it and as exist in natural state in strata, associated or not with crude oil, and are in a gaseous state upon production from a reservoir and excludes condensates;

“natural gas liquids” or “NGL” means hydrocarbons liquefied at the surface in separators, field facilities or in gas processing plants, and include ethane, propane, butanes, pentanes, and natural gasoline;

“Nigeria” means the territory of the Federal Republic of Nigeria inclusive of its land borders, territorial waters, continental shelf and exclusive economic zone;

“Nigerian National Petroleum Corporation” or “NNPC” means the Nigerian National Petroleum Corporation established by section 1 of the Nigerian National Petroleum Corporation Act, Cap. N123, Laws of the Federation of Nigeria, 2004;

“NNPC Limited” means Nigerian National Petroleum Company Limited, a company to be incorporated under the Companies and Allied Matters Act under this Act;

“non-associated gas” means natural gas that is found in a reservoir which does not contain significant quantities of crude oil;

“oil mining lease” means an oil mining lease granted under the Petroleum Act, Cap. P10, Laws of the Federation of Nigeria, 2004 prior to the effective date of this Act;

“oil prospecting licence” means an oil prospecting licence granted under the Petroleum Act, Cap. P10, Laws of the Federation of Nigeria, 2004 prior to the effective date of this Act;

“onshore” means any land areas above the high-water mark, other than frontier acreages;

“open access” means, subject to section 116, non-discriminatory access to a midstream facility, transportation pipeline or transportation network for all users or shippers under conditions where the licensee does not have any preferential rights to these facilities, under conditions stipulated in the licence and in the case of a transportation network or pipeline;

“paying quantities” means in relation to the level of production of a field, the production of volumes of oil or gas or both, of which the value exceeds the royalty and operating costs on a regular basis, based on levels of production that are aimed at achieving maximum economic recovery of the petroleum;

“parcel” means a parcel under section 69 (4) of this Act;

“permit” means an official certificate of permission to undertake an activity issued by the Commission or Authority;

“person” means any individual, company or other juristic person;

“petroleum” means hydrocarbons and associated substances as exist in its natural state in strata, and includes crude oil, natural gas, condensate and mixtures of any of them, but does not include bitumen and coal;

“Petroleum Equalisation Fund” means the fund established under the Petroleum Equalisation Fund (Management Board, etc.) Act, Cap. P11, Laws of the Federation of Nigeria, 2004;

“petroleum exploration licence” means a licence under section 71 of this Act;

“petroleum exploration operations” means any geological, geophysical, geochemical and other surveys and any interpretation of data relating thereto, and the drilling of such shot holes, core holes and stratigraphic tests, related to the exploration for crude oil and natural gas, but not including exploration wells or appraisal wells;

“petroleum industry” means the industries involved in upstream, midstream and downstream petroleum operations in Nigeria;

“Petroleum Inspectorate” means the Petroleum Inspectorate established under section 10 of the Nigerian National Petroleum Corporation Act, Cap. N123, Laws of the Federation of Nigeria, 2004;

“petroleum liquids” means crude oil, condensates, liquid petroleum products and natural gas liquids;

“petroleum liquids transportation pipeline licence” means a licence for a petroleum liquids transportation pipeline granted under section 190 of this Act;

“petroleum liquids transportation network operator” means the holder of a petroleum liquids transportation network operator licence;

“petroleum liquids transportation network operator licence” means a licence to operate a petroleum liquids transportation network under section 193 of this Act;

“petroleum liquids transportation pipeline” means a pipeline transporting petroleum liquids;

“petroleum mining lease” means a lease under section 81 of this Act;

“petroleum operations” means upstream, midstream and downstream petroleum operations;

“Petroleum Pricing and Product Regulatory Agency” means the Petroleum Pricing and Product Regulatory Agency established under section 1 of the Petroleum Pricing and Product Regulatory Agency (Establishment) Act, Cap. P43, Laws of the Federation of Nigeria, 2004;

“petroleum product distribution licence” means a licence for the distribution of petroleum products under section 201 of this Act;

“petroleum product distributor” means the holder of a petroleum product distribution licence;

“petroleum product retailer” means a holder of a petroleum product retail licence;

“petroleum product retail licence” means a permit to retail petroleum products to final customers under section 203 of this Act;

“petroleum products” means materials derived from crude oil and natural gas processing such as ethane, propane, butanes, pentanes, liquefied petroleum gas, natural gas liquids, asphalts, gasoline, diesel, gas oil, jet fuel, transportation fuels, fuel oils for heating and electricity generation and such other derivatives;

“petroleum prospecting licence” means a licence under section 72 of this Act;

“pipeline” means all parts of any tubular infrastructure through which petroleum is conveyed, including pipes, valves, pumping and compressor stations and other equipment appurtenant to pipes;

“President” means the President of the Federal Republic of Nigeria;

“producer client” means a lessee who is a client of the domestic gas aggregator making use of the escrow account mechanism;

“production sharing contract” means any agreement for the exploration, development and production of petroleum on terms under which the financial risk-bearing party shall recover costs and receives a share of the profits based on a share of production as established in the contract from the applicable area;

“public service obligations” means specific obligations imposed by the Authority on licensees in relation to security of supply, social service, economic development, environmental protection or the use of indigenous materials;

“qualified person” means a person designated by regulation in respect of the issuance of a licence, lease or permit to any person with respect to upstream, midstream and downstream petroleum operations;

“raw gas” means natural gas prior to any conditioning for the removal of H₂S, CO₂ and other impurities and prior to processing to remove natural gas liquids and which does not have the qualities of marketable natural gas;

“regulation” means rule or order having force of law issued by the Minister, Minister of Finance, the Commission or Authority in accordance with this Act;

“rent” means the annual charge made in respect of a licence or lease granted under this Act;

“renegotiated production sharing contract” means a production sharing contract for which court cases or arbitration cases were outstanding, and was or is being renegotiated after the effective date of this Act with the objective of settling the outstanding court cases or arbitration cases;

“reserve fund” is the fund under section 244 (b) of this Act;

“reservoir” means a subsurface rock formation containing an individual and separate natural accumulation of producible petroleum characterised by a single natural pressure system;

“retail gas supply licence” means a licence granted under section 146 of this Act;

“retention area” means the area approved by the Commission for a significant gas discovery or significant crude oil discovery under this Act;

“retention period” means the period not exceeding 10 years granted by the Commission to the holder of a petroleum licence to retain rights to develop an area over which a significant gas discovery or significant crude oil discovery has been made;

“royalties” means the royalties specified in the Seventh Schedule to this Act;

“settlor” is a holder of an interest in a petroleum prospecting licence or petroleum mining lease whose area of operations is located in or appurtenant to any community or communities;

“shallow water” means any area within the territorial waters, continental shelf or exclusive economic zone offshore of Nigeria up to and including a water depth of 200 meters;

“signature bonus” means a payment made to Government with respect to the grant of a petroleum prospecting licence or petroleum mining lease;

“Significant crude oil discovery” means a discovery of crude oil that is substantial in terms of reserves and is potentially commercial, but cannot be declared commercial for one or both of the following reasons-

- (a) no pipeline or facilities are available in existing systems where commercial conditions indicate that the best option for development is based on the future expansion of such systems or the use of such systems when capacity will become available in the future;
or
- (b) where the crude oil discovery would only be commercial when jointly developed with other existing discoveries or potential future discoveries;

“significant gas discovery” means a discovery of natural gas that is substantial in terms of reserves and is potentially commercial, but cannot be declared commercial for one or more of the following reasons-

- (a) no markets for natural gas within Nigeria;
- (b) export markets need to be identified and developed;
- (c) no pipeline, processing or liquefaction capacity is available in existing systems where commercial conditions indicate that the best option for development is based on the future expansion of such systems or the use of such systems when capacity will become available in the future; or
- (d) where the natural gas discovery would only be commercial when jointly developed with other existing natural gas discoveries or potential future natural gas discoveries;

“special investigation unit” means a unit established either under section 27 or 50 of this Act;

“standard cubic foot” means, in relation to natural gas, the quantity of dry ideal natural gas at a temperature of 60 degrees Fahrenheit and a pressure of 14.696 pounds per square inch absolute contained in a volume of one cubic foot;

“supplier” means the holder of a wholesale gas supply licence, a wholesale petroleum liquids supply licence or a retail gas supply licence;

“tariff” means the price charged for the provision of a particular service, or group of services, with respect to midstream and downstream petroleum operations;

“terrain” means the area of any petroleum exploration licence, petroleum prospecting licence or petroleum mining lease;

“terminal” means a terminal for petroleum liquids, pumping or booster station, or other installation or structure associated with a terminal, including its storage facilities, other than a terminal situated within “a port or any approaches thereto” within the meaning of the Nigerian Ports Authority Act, Cap. N126, Laws of the Federation of Nigeria, 2004;

“third party access” means the legal requirement for owners of certain infrastructure facilities to grant access to those facilities to parties other than themselves or their own customers, for uncommitted capacity, including competitors in the provision of the relevant services, on terms stipulated in this Act or regulations;

“transportation fuels” means fuels used for transport on land, on water and in the air, such as gasoline, aviation gasoline, diesel, jet fuel, marine bunker fuel, LNG, CNG and other fossil fuel based products, as well as hydrogen, bio-diesel, bio-jet fuel, ethanol and other fuels used for transport purposes;

“transportation network” means a system of interconnected transportation pipelines and other facilities required to transport natural gas or petroleum liquids;

“transportation pipeline” means a pipeline used for the bulk conveyance of petroleum liquids and for natural gas under high-pressure;

“transportation pipeline owner” means the holder of a gas transportation pipeline licence or a petroleum liquids transportation pipeline licence;

“upstream petroleum operations” means the exploration for, appraisal of, development of and winning or obtaining of petroleum in Nigeria by or on behalf of a company on its own account for commercial purposes, petroleum exploration operations, the drilling of exploration, appraisal and development wells, all activities upstream of the measurement points, related to the winning of petroleum through wells or mining from petroleum reservoirs, drilling, fracking, completing, treatment and operation of wells producing petroleum, construction and operation of gathering lines and manifolds for crude oil, natural gas and water, construction and operation of high and low pressure separators, construction and operation of facilities to treat crude oil and natural gas, flaring of natural gas, compression and reinjection of natural gas in reservoirs, construction and operation of facilities for the production of electricity or heat from natural gas or other fuels as energy source for the winning of petroleum, injection or re-injection of water into the reservoirs, construction and operation of pipelines and other facilities for the discharge of water, construction and operation of fixed or floating platforms or other vessels required for the winning of petroleum, construction and operation of fixed or floating storage facilities of crude oil in the licence area, transportation to and from the licence area of personnel, goods and equipment, metering of well stream fluids, metering of petroleum at the measurement points prior to transportation, sale and marketing of crude oil, natural gas or condensates or any of them at the measurement points and such other activities which by regulation are considered upstream petroleum operations, and related administration and overhead, provided, however, that where field facilities or fixed or floating platforms or vessels provide for fully integrated upstream and midstream petroleum operations, the Commission may consider the entire operations as upstream petroleum operations under section 8 (d) of this Act;

“UTM” means the Universal Transverse Mercator, a conformal projection which uses a two-dimensional Cartesian coordinate system to give locations on the surface of the earth;

“wholesale customer” means a class of customers designated in regulations with respect to-

(a) natural gas, the right to contract for and purchase a supply of wholesale gas, with a capability to connect individually and economically to a transportation pipeline or transportation network and shall include gas distributors, and

(b) crude oil or petroleum products, it shall be a customer of a yearly volume defined by regulation and shall include petroleum product distributors;

“wholesale gas” means natural gas sold by a supplier to wholesale customers;

“wholesale gas supplier” means the holder of a wholesale gas supply licence;

“wholesale gas supply licence” means a licence for the supply to wholesale customers of natural gas under section 142 of this Act;

“wholesale petroleum liquids supplier” means a holder of a wholesale petroleum liquids supply licence;

“wholesale petroleum liquids supply licence” means a licence for the supply to wholesale customers of petroleum liquids under section 197 of this Act.

319. Citation

This Act may be cited as the Petroleum Industry Act, 2021.

SCHEDULES

FIRST SCHEDULE

Section 3 (3)

RIGHTS OF PRE-EMPTION

1. The licensee or lessee shall use his best endeavours to increase so far as possible with his existing facilities, the supply of petroleum or petroleum products, or both, for the Federal Government to the extent required by the Minister.
2. The licensee or lessee shall, with all reasonable expedition and so as to avoid demurrage on the vessels conveying the same, use his best endeavours to deliver all petroleum or petroleum products purchases by the Minister under the right of pre-emption in such quantities, and at such places of shipment or storage in Nigeria, as may be determined by the Minister.
3. Where a vessel employed to carry petroleum or petroleum products under paragraph 2 is detained on demurrage at the port of loading, the licensee or lessee shall pay the amount due for demurrage according to the terms of the charter-party or the rates of loading previously agreed to by the licensee or lessee, unless the delay is due to causes beyond the control of the licensee or lessee.
4. Any dispute which may arise as to whether a delay is due to causes beyond the control of the licensee or lessee shall be settled by agreement between the Minister and the licensee or lessee or, in default of agreement, by arbitration.
5. The price to be paid for petroleum or petroleum products taken by the Minister in exercise of the right of pre-emption shall be-
 - (a) the reasonable value at the point of delivery, less discount to be agreed by both parties;
or

- (b) where no such agreement has been entered into prior to the exercise of the right of pre-emption, a fair price at the port of delivery to be settled by agreement between the Minister and the licensee or lessee or, in default of agreement, by arbitration.
6. To assist in arriving at a fair price for the purposes of paragraph 5 (b), the licensee or lessee shall, if the Minister so requires-
- (a) furnish for the confidential information of the Minister particulars of quantities, descriptions and prices of petroleum or petroleum products sold to other customers and of charters or contracts entered into for their carriage; and
 - (b) exhibit original or authenticated copies of the relevant contracts or charter-parties.
7. Any arbitration under the First Schedule shall take place after the petroleum or petroleum products have been delivered.

SECOND SCHEDULE

Sections 54 (7) and 65 (1)

PRINCIPLES OF NEGOTIATING INCORPORATED JOINT VENTURES

General Provisions

- 1.
- (1) An IJVC may be created for an existing joint operating agreement and each IJVC shall be formed under the Companies and Allied Matters Act, and NNPC Limited shall enter into negotiations with the other parties to such existing joint operating agreements with a view to, among other things-
 - (a) agreeing and executing a shareholders' agreement in respect of the applicable IJVC;
 - (b) agreeing the provisions of the memorandum and articles of association of the applicable IJVC; and
 - (c) incorporating the applicable IJVC.
 - (2) Prior to the incorporation of each IJVC, the parties to each applicable joint operating agreement shall continue to carry out their obligations under such joint operating agreement in the ordinary course of business.
 - (3) Each IJVC shall be owned by the parties to the applicable existing joint operating agreement in the same proportion as their existing participating interests set forth in such joint operating agreement, or in such other proportion as the parties thereto shall mutually agree.

(4) Upon and following the incorporation of an IJVC-

- (a) it can carry out upstream, midstream and downstream petroleum operations subject to the appropriate fiscal regime as specified in this Act, provided, however, that where the parties wish to enter into more than one stream of operations, the parties shall incorporate separate companies under section 302 (3) and (4);
- (b) it shall be deemed to be the sole licensee or lessee (as applicable) of each petroleum prospecting licence or petroleum mining lease held jointly under the applicable existing joint operating agreement immediately prior to its incorporation;
- (c) it shall at all times be the operator of petroleum operations under each petroleum prospecting licence and petroleum mining lease that it holds;
- (d) it may contract for specific petroleum services but may not enter into any contract or group of contracts which would have the effect of transferring, directly or indirectly, any of the functions as operator except with the approval of the Commission, in the case of upstream petroleum operations, or Authority, in the case of midstream and downstream petroleum operations;
- (e) it shall by publication on its website make public reasonable details relating to its incorporation and constitutional documents; and
- (f) it may render any services related to its operations (other than financial and insurance services), to any other IJVC, NNPC Limited, or any other third party under such conditions as it may deem necessary or desirable.

Special Provisions Relating to Incorporated Joint Venture Companies

2.

- (1) No IJVC shall be subject to the provisions of the Fiscal Responsibility Act and the Public Procurement Act.
- (2) Once incorporated, the following provisions shall apply to each IJVC-
 - (a) prior to any sale of shares in an IJVC by any shareholder, the other shareholders (including NNPC Limited) shall have the right of first refusal on such transaction at fair market value and appropriate ministerial consent; and
 - (b) each IJVC shall have its head office and main operational offices in Nigeria.

Organisation of Incorporated Joint Venture Companies

3.

- (1) Each IJVC shall have a Board of directors to be appointed by the shareholders of the IJVC.
- (2) The Board of directors of each IJVC shall be made up of persons who-

- (a) have distinguished themselves in their various capacities; and
 - (b) are able to exercise independence and objectivity with respect to the affairs of the IJVC.
- (3) The powers of the Board of directors of each IJVC shall be established in the articles of association of such IJVC, provided that, the Board of directors of such IJVC shall have the power to approve the annual work program and budget of such IJVC and any revisions thereof.
- (4) The Board of directors of each IJVC may create committees and subcommittees.
- (5) Decisions of the Board of directors of each IJVC shall be guided by commercial and technical considerations that represent good international petroleum industry practices.

Special provisions relating to the shares of Incorporated Joint Venture Companies

4.

- (1) The share capital of each IJVC shall initially consist only of ordinary shares.
- (2) The shares held directly or indirectly by NNPC Limited in each IJVC shall at all times during the life of each IJVC remain non-transferable either by way of sale, assignment, mortgage or pledge to any other entity except as approved by the Government and such sale or transfer shall be at fair market value after an open, transparent and competitive bidding process in which only companies who qualify under section 95 (11) of this Act can participate.

Special provisions relating to rents, royalties, taxes and other levies payable by an IJVC

5.

- (1) Each IJVC shall be subject to this Act on payment of rents, royalties and taxes.
- (2) The initial capitalisation of each IJVC and the transactions required to create such IJVC shall not create any additional tax liabilities for any of the holders of shares in the IJVC, provided that, all assets, interests and liabilities previously held jointly pursuant to the applicable joint operating agreement are transferred to the IJVC at their net book value.

Special right of shareholders in an Incorporated Joint Venture Company to purchase petroleum and any petroleum derivatives

6.

- (1) Each direct holder of shares in an IJVC shall have the right to purchase from the IJVC-

- (a) at open market prices, a percentage of the crude oil, natural gas and condensates produced by such IJVC equal to its shareholding interest in such IJVC; and
 - (b) at open market prices, a percentage of the petroleum products produced by such IJVC equal to its percentage ownership interest in the IJVC.
- (2) Where the direct holders of shares in an IJVC do not purchase all crude oil, natural gas, condensates and petroleum products that they are entitled to under subsection (1), such IJVC may sell the remaining balance to any person at open market prices on arm's length terms.
 - (3) Any income received by an IJVC as a result of the export of petroleum may be held in bank accounts abroad and may be used by such IJVC to pay its obligations outside Nigeria, subject to any obligation of such IJVC under this Act and any other applicable enactments.
 - (4) The transfer overseas of any fund by an IJVC shall be subject to the regulations and policies of the Central Bank of Nigeria.

Pro-rata Dividend Distribution

7.

- (1) Each IJVC shall pay dividends and other distributions pro rata among the number of issued shares held directly by its shareholders.
- (2) Each dividend payment or other distribution shall be subject to any withholding tax applicable under the Companies Income Tax Act.

Dividend Policy

8. The Board of directors of each IJVC shall establish and from time to time amend the dividend distribution policy of such IJVC and such dividend distribution policy shall be premised on the prudent and commercially reasonable management of the finances and operations of the IJVC.

Special Provisions Relating to Financing of Operations

9.

- (1) Each IJVC shall finance any exploration for new prospects, development of new fields, or any other investments in accordance with the applicable approved annual work program and budget for such incorporated joint venture from the cash flows of the IJVC and any borrowings by such IJVC, in each case as approved by its Board of directors.
- (2) Where the cash flow, together with any borrowings, of an IJVC is insufficient to finance the work program in respect of any exploration for new prospects, development of new fields, or any other investments approved by the Board of directors of such IJVC, the shareholders of such IJVC shall consult as to the manner in which further financing can be raised.
- (3) With respect to subparagraph (2), the shareholders may consider among others-
 - (a) permitting any of the shareholders to contribute equity in exchange for the issuance of ordinary shares; and

- (b) the creation of preferred shares for any shareholder that wishes to make a financial contribution to the incorporated joint venture

THIRD SCHEDULE

Sections 167 (1) and 318

1. The domestic base price at the marketable gas delivery point under section 167 (1) shall be determined based on regulations incorporating among such other matters as may apply pursuant to the subsequent paragraph, the following principles-
 - (a) the price must be of a level to bring forward sufficient natural gas supplies for the domestic market on a voluntary basis by the upstream petroleum industry;
 - (b) unless required to satisfy conditions under sub-subparagraph (a), the price shall not be higher than the average of similar natural gas prices in major emerging countries that are significant producers of natural gas based on countries determined by the Authority;
 - (c) subject to the limitations under sub-subparagraph (b) the price shall be adjusted upward on a yearly basis in order to account for inflation on a yearly amount or percentage basis; and
 - (d) the Authority shall determine the domestic base price based on the regulations within three months following the effective date and modify this price where required by the circumstances in the domestic market pursuant to regulations.

Allocation and Pricing of the Domestic Delivery Obligation

2. Pursuant to section 110 of this Act, the Commission shall establish the criteria for allocation of domestic gas delivery obligations including the following-
 - (a) all available gas at low cost of supply shall be eligible for designation to the domestic gas market –
 - (i) the ranking of gas available for the domestic gas market shall be determined by a tier system based on the cost of supply,
 - (ii) the pricing of gas for the domestic market shall be based on the lowest cost of supply of gas available in the three-tier classification of supply sources for the domestic market, and

- (iii) the Commission shall determine the pricing mechanism to be utilised for gas supply to the domestic market under the domestic delivery obligation and such pricing may include gas on gas, oil based price mechanism, equivalent energy mechanism and bilateral pricing mechanism or any other such mechanism that reflects the prevailing market condition;
- (b) all associated gas from producing fields shall be eligible for designation as tier one gas for the domestic gas market;
- (c) all gas cap gas from depleted oil fields shall be considered as tier two gas and designated for the domestic gas market; and
- (d) available gas in non-associated gas fields onshore and shallow offshore shall be considered as tier three to be evaluated for eligibility of supply to the domestic gas market based on its cost of supply.

FOURTH SCHEDULE

Section 168 (1) and (4)

Pricing formula for gas price for the gas based Industries

The gas price for the gas based industries shall be determined by the following pricing formula-

$$CP = NRP * (1 + EPF) \leq EPP$$

Where - CP is the applicable price in US \$/MMBtu, EPP is the domestic base price under section 168 (3), NRP is the National Reference Price which is US \$1/MMBtu

EPF is the End Product Factor which is described by the following formula (CMPP – PRP)/PRP

CMPP is the Average Current Month End Product Price in US \$/MT

PRP = Product Reference Price in US \$/MT i.e. dollar per metric tonne which varies depending on the industry

<i>End Product</i>	<i>NRP (US \$/mmbtu) Net of transport Tariff US \$/Kcf</i>	<i>PRP (US\$/MT)</i>
Ammonia	1.00	250
Urea	1.00	250
Methanol	1.00	250
Polypropylene (LDPPE/HDPPE)	1.00	250
Low Sulphur Diesel (GTL)	1.00	325

The Authority may by regulation change the formulas or the values for NRP, CMPP and PRP and introduce other values for one or more gas based industries where the circumstances so justify.

FIFTH SCHEDULE

Sections 263 (1) (d), 266 (1) (a), 270, 271 (2) (b) and (c),
277 (1) (c) 280 (1) (b) and 302 (10) (a)

CAPITAL ALLOWANCES

Interpretation

1. For the purpose of this Schedule-

- (a) “concession” includes a petroleum exploration licence, petroleum prospecting licence, petroleum mining lease, any right, title or interest in or to petroleum in the ground and any option of acquiring any such right, title or interest;
- (b) “lease” includes an agreement for a lease where the term to be covered by the lease has begun, any tenancy and any agreement for the letting or hiring out of an asset, but does not include a mortgage, and all cognate expressions including “LEASEHOLD INTEREST” shall be construed accordingly and where,-
 - (i) with the consent of the lessor, a lessee of any asset remains in possession after the termination of the lease without a new lease being granted, that lease shall be deemed for the purpose of this Schedule to continue so long as the lessee remains in possession, and
 - (ii) on the termination of a lease of any asset, a new lease of that asset is granted to the lessee, the provisions of this Schedule shall have effect as if the second lease were a continuation of the first lease;
- (c) “qualifying expenditure” means, subject to the express provisions of this Schedule, expenditure incurred for the purpose of hydrocarbon tax in an accounting period, which is capital expenditure, referred to as-
 - (i) “qualifying plant expenditure” incurred on plant, machinery and fixtures directly for upstream petroleum operations applicable to crude oil for petroleum mining leases or petroleum prospecting licence,

- (ii) “qualifying pipeline and storage expenditure” including floating production systems incurred directly or gathering pipelines for upstream petroleum operations applicable to crude oil for petroleum mining leases or petroleum prospecting licences,
 - (iii) “qualifying building expenditure” other than expenditure, which is included in sub-subparagraph (c) (i), (ii) or (iv) of this “Interpretation”, incurred directly on the construction of buildings, structures or works of a permanent nature for upstream petroleum operations applicable to crude oil for petroleum mining leases or petroleum prospecting licences, or
 - (iv) “qualifying drilling expenditure”, tangible and intangible, other than expenditure which is included in sub-subparagraph (c) (i) or (ii) of this “Interpretation”, incurred directly in connection with upstream petroleum operations for petroleum mining leases or petroleum prospecting licence, in view of searching for or discovering and testing petroleum deposits, or winning access, or the construction of any works or buildings which are likely to be of little or no value when the upstream petroleum operations for which they were constructed cease to be carried on, provided that, for the purposes of these definitions, qualifying expenditure shall not include any sum which may be deducted under section 263 of this Act and have benefited from capital allowances prior to the acquisition of the asset by another entity;
- (d) for the purpose of interpretation of qualifying expenditure, where expenditure is incurred by a company before its first accounting period and such expenditure would have fallen to be treated as qualifying expenditure, ascertained without the qualification contained in the foregoing proviso if it had been incurred by the company on the first day of its first accounting period and that expenditure is incurred in respect of an asset, owned by the company then such expenditure shall be deemed to be qualifying expenditure incurred by it on that day, or which has been disposed of by the company before the beginning of its first accounting period, then any loss suffered by the company on the disposal of such asset shall not be allowed on commencement of accounting period and any profit realised by the company on such disposal shall be liable to capital gains tax in the same period accordingly.

Provisions relating to pre-production expenditure

2. For the purpose of this Schedule, where-

- (a) expenditure has been incurred before its first accounting period and the expenditure would have been treated as a qualifying expenditure in any of the classes of qualifying expenditures stated in subparagraph (1) (c) (i)-(iv), then it shall be so classified and capital allowances claimed accordingly; and
- (b) Where the expenditure before the first accounting date should have been treated as allowable deduction in an accounting period, it shall be so allowed but fully amortised over a period of five years with a 1% retention value.

Owner and meaning of relevant interest

3.

- (1) For the purpose of this Schedule, where an asset consists of a building, structure or works, the owner shall be taken to be the owner of the relevant interest in such building, structure or works.
- (2) Subject to this paragraph, the expression “the relevant interest” means, in relation to any expenditure incurred on the construction of a building, structure or works, the interest in such building, structure or works to which the company which incurred the expenditure was entitled when it incurred the expenditure.
- (3) Where a company incurs qualifying building expenditure or qualifying drilling expenditure on the construction of a building, structure or works, the company is entitled to two or more interests therein, and one of those interests is an interest which is reversionary on all the others, that interest shall be the relevant interest for the purpose of this Schedule.
- (4) Where the owner of the relevant interest does not have statutory title to the asset, that is, it is not the licensee or lessee to the asset, the qualifying capital expenditure and the capital allowances accruing therefrom, for the purposes of this Schedule, shall be to the benefit of the holder of the licence or lease.

Sale of Buildings

4. Where capital expenditure has been incurred on the construction of a building, structure or works and the relevant interest is sold, the company which buys that interest shall be deemed, for the purpose of this Schedule, to have incurred, on the date when the purchase price became payable, capital expenditure on the construction equal to the price paid by it for such interest or to the original cost of construction, whichever is the less and the capital expenditure shall not be eligible for capital allowance deduction under the hydrocarbon tax, provided that where such relevant interest is sold before the building, structure or works has been used, the foregoing provisions of this paragraph shall have effect with respect to sale and the original cost of construction shall be taken to be the amount of the purchase price on such sale.

Annual Allowance

5.

- (1) Subject to this Schedule, where in any accounting period, a company owning any asset has incurred in respect of the asset qualifying expenditure wholly, reasonably, exclusively and necessarily for the purpose of upstream petroleum operations applicable to crude oil carried on by it, there shall be due to that company as from the accounting period in which the expenditure was incurred, an allowance “an annual allowance” at the appropriate rate percent specified in the table to this Schedule.

- (2) Notwithstanding the provisions of subparagraph (1) of this paragraph, there shall be retained in the books, in respect of each asset 1% of the initial cost of the asset which may only be written off in accordance with subparagraph (3).
- (3) Any asset or part of it in respect of which capital allowances have been granted, may only be disposed of on the authority of a certificate of disposal issued by the Commission or any person authorised by it.
6. Subject to paragraph 18, an annual allowance in respect of qualifying expenditure incurred in respect of any asset shall only be due to a company for any accounting period if at the end of the accounting period it was the owner of that asset and the asset was in use for the purpose of the upstream petroleum operations applicable to crude oil carried on by it.

Balancing allowances

7. Subject to this Schedule, where in any accounting period of a company, the company owning any asset in respect of which it has incurred qualifying expenditure wholly and exclusively for the purposes of upstream petroleum operations applicable to crude oil carried on by it, disposes of that asset, an allowance “a balancing allowance” shall be due to that company for that accounting period of the excess of the residue of that expenditure, at the date such asset is disposed of, over the value of that asset at that date, provided that a balancing allowance shall only be due in respect of such asset if immediately prior to its disposal it was in use by such company for the purposes of the upstream petroleum operations applicable to crude oil for which such qualifying expenditure was incurred.

Balancing charges

8. Subject to this Schedule, where in any accounting period of a company, the company owning any asset in respect of which it has incurred qualifying expenditure wholly and exclusively for the purposes of upstream petroleum operations applicable to crude oil carried on by it, disposes of that asset, the excess “a balancing charge” of the value of that asset, at the date of its disposal, over the residue of that expenditure at that date shall, for the purpose of section 262 (1) (a) of this Act, be treated as income of the company of that accounting period, provided that a balancing charge in respect of such asset shall only be so treated if immediately prior to the disposal of that asset it was in use by such company for the purposes of the upstream petroleum operations applicable to crude oil for which the qualifying expenditure was incurred and shall not exceed the total of annual allowances due under this Schedule, in respect of such asset.

Residue

9. The residue of a qualifying expenditure, in respect of any asset, at any date, shall be taken to be the total qualifying expenditure incurred on or before that date, by the owner, in respect of that asset, less the total of any annual allowances due to such owner, in respect of that asset, before that date.

Meaning of “disposed of”

10. Subject to any express provision to the contrary, for the purpose of this Schedule-

- (a) a building, structure or works of a permanent nature is disposed of if any of the following events occur-
- (i) the relevant interest is sold,
 - (ii) that interest, being an interest depending on the duration of a concession, comes to an end at the end of that concession,
 - (iii) that interest, being a Leasehold interest, comes to an end and the possession of the building, structure or works of a permanent nature reverts to the holder of the reversionary interest, or
 - (iv) the building, structure or works of a permanent nature are demolished, destroyed or, without being demolished or destroyed, cease altogether to be used for the purpose of upstream petroleum operations applicable to crude oil carried on by the owner;
- (b) plant, machinery or fixtures are disposed of if they are sold, discarded or cease altogether to be used for the purposes of upstream petroleum operations applicable to crude oil carried on by the owner; or
- (c) assets in respect of which qualifying drilling expenditure is incurred are disposed of if they are sold or if they cease to be used for the purpose of the upstream petroleum operations applicable to crude oil of the company incurring the expenditure either on the company ceasing to carry on the operations or on such company receiving insurance or compensation money therefrom.

Value of an asset or interest in a petroleum prospecting licence or petroleum mining lease

11.

- (1) The value of an asset or interest in a petroleum prospecting licence or petroleum mining lease at the date of its disposal shall be the net proceeds of the sale or of the relevant interest, or, where it was disposed of without being sold, the amount which, in the opinion of the service, the asset or the relevant interest, as the case may be, would have fetched if sold in the open market at that date, less the amount of any expenses which the owner might reasonably be expected to incur if the asset were so sold.
- (2) For the purpose of this paragraph, where an asset is disposed of in the circumstances that insurance or compensation money are received by the owner, the asset or the relevant interest, as the case may be, shall be treated as having been sold and as though the net proceeds of the insurance or compensation money were the net proceeds of the sale.

Apportionment

12.

- (1) Any reference in this Schedule to the disposal, sale or purchase of any asset or interest includes a reference to the disposal, sale or purchase of that asset, as the case maybe, together with any associated asset, whether or not qualifying expenditure has been incurred on such associated asset, and, where an asset is disposed of, sold, or purchased together with another asset, so much of the value of the assets as, on a just apportionment, is properly attributable to the first mentioned asset shall, for the purposes of this Schedule, be deemed to be the value of, or the price paid for that asset, as the case may be.
- (2) For the purpose of this subparagraph, all the assets or interest which are purchased or disposed of in pursuance of one bargain shall be deemed to be purchased or disposed of together, notwithstanding that separate prices are or purport to be agreed for each of those assets or that there are or purport to be separate purchases or disposals of those assets.
- (3) The provisions of subparagraph (1) shall apply, with modifications, to the sale or purchase of the relevant interest in any asset together with any other asset or relevant interest in that other asset provided that the provisions for apportionment in subparagraphs (1) and (2) shall not apply in the sale or disposal of concessions or interest in a part of the asset.

Part of an asset

13. Any reference in this Schedule to any asset shall be construed whenever necessary as including a reference to a part of any asset, including an undivided part of that asset in the case of joint interests and when so construed, any necessary apportionment shall be made in a manner, which in the opinion of the Service, is just and reasonable.

Exclusion of certain expenditure

14. Subject to the express provisions of this Schedule, where any company has incurred expenditure which is allowed to be deducted under any provision, other than a provision of this Schedule, such expenditure shall not be treated as qualifying expenditure.

Asset used or expenditure incurred partly for the purpose of petroleum operations

15.

- (1) The following provisions of this paragraph shall apply where either or both of the following conditions apply with respect to any asset the-
 - (a) owner of the asset has incurred in respect of the asset a qualifying expenditure partly for the purpose of upstream petroleum operations applicable to crude oil carried on by him and partly for other purposes; or
 - (b) asset in respect of which the owner has incurred qualifying expenditure is used partly for the purpose of upstream petroleum operations applicable to crude oil carried on by such owner and partly for other purposes.
- (2) Any allowances which would be due or any balancing charges which would be treated as income if both expenditure were incurred wholly and exclusively for the purpose of the

upstream petroleum operations applicable to crude oil and if the asset were used wholly and exclusively for the purpose of such operations, shall be computed in accordance with the provisions of this Schedule.

- (3) So much of the allowances and charges computed in accordance with subparagraph (2) shall be due or shall be so treated, as the case may be, as in the opinion of the Service is just and reasonable having regard to all circumstances and to the provisions of this Schedule.

Disposal without change of ownership

16.

- (1) Where an asset in respect of which qualifying expenditure has been incurred by the owner has been disposed of in circumstances that the owner remains the owner, then, for the purpose of determining whether and, if so, in what amount, any annual or balancing allowance or balancing charge shall be made to or on such owner in respect of his use of that asset after the date of the disposal-

(a) qualifying expenditure incurred by the owner in respect of the asset prior to the date of the disposal shall be left out of account; and

(b) the owner shall be deemed to have bought such asset immediately after the disposal for a price equal to the residue of the qualifying expenditure at the date of the disposal, increased by the amount of any balancing charge or decreased by the amount of any balancing allowance made as a result of the disposal.

- (2) Capital allowances shall be for the computation of hydrocarbon tax and not for cost recovery purposes in production sharing contracts, which shall have their own provisions under the model contract.

Capital allowance rates

17.

- (1) Qualifying expenditure shall be subject to the rates below-

	1 st	2 nd	3 rd	4 th	5 th
Qualifying Capital Expenditure					
Qualifying Plant Expenditure	20%	20%	20%	20%	19%
Qualifying Pipeline Expenditure	20%	20%	20%	20%	19%
Qualifying Building Expenditure	20%	20%	20%	20%	19%
Qualifying Drilling Expenditure	20%	20%	20%	20%	19%

- (2) Exploration expenditure and the first two appraisal wells expenditure in the same field are to be treated as deductible costs 100% in the year incurred, while for additional exploration expenditures and appraisal expenditures in the same field relating to pre-production period are

to be amortised and deducted on commencement of accounting period at an annual allowance of 20% in the first to fourth year and 19% in the fifth year with a 1% retention value.

18.

(1) For the purpose of this Schedule, an asset shall be deemed to be in use during a period of temporary disuse.

(2) For the purpose of paragraphs 5 and 6 of this Schedule-

(a) an asset in respect of which qualifying expenditure has been incurred by the owner for the purpose of petroleum operations carried on by him shall be deemed to be in use between the dates mentioned, where the Service determines that the first use to which the asset will be put by that owner will be for such operations; and

(b) the said date shall be the date on which such expenditure was incurred and the date on which the asset is in fact first put to use-

Provided that where any allowance has been given in consequence of subparagraph (2) and the first use to which such asset is put is not for the purpose of such operations, or it is not put to use within five years from the date the expenditure was incurred, capital allowances already claimed on such assets shall be withdrawn and the amount so claimed shall be assessed to tax.

SIXTH SCHEDULE

Sections 264 (q), 266 (1) (b) and (2),

277 (1) (d) and 280 (1) (c)

PRODUCTION ALLOWANCES AND COST PRICE RATIO LIMIT

Production Allowance

1.

(1) There shall be a production allowance for crude oil production by leases which are converted oil mining leases based on a conversion contract and their renewals, which shall be the lower of US \$2.50 per barrel and 20% of the fiscal oil price.

(2) There shall be a production allowance per field for crude oil production by a company for leases granted after the commencement of this Act and determined as follows-

(a) for onshore areas - the lower of US \$8.00 per barrel and 20% of the fiscal oil price per barrel up to a cumulative maximum production of 50 million barrels from commencement of production and the lower of US \$4.00 per barrel and 20% of the fiscal oil price thereafter;

- (b) for shallow water areas - the lower of US \$8.00 per barrel and 20% of the fiscal oil price, up to a cumulative maximum production of 100 million barrels from commencement of production and the lower of US \$4.00 per barrel and 20% of the fiscal oil price thereafter; and
 - (c) for deep offshore areas and frontier basins - the lower of US \$8.00 per barrel and 20% of the fiscal oil price, up to a cumulative maximum production of 500 million barrels from the commencement of production and the lower of US \$4.00 per barrel and 20% of the fiscal oil price thereafter.
- (3) The detailed procedures for determining the production allowances shall be established in regulations.
- (4) Any allowances for crude oil shall also apply to condensates and liquid natural gas liquids under section 260 (1) (a) of this Act.

Cost Price Ratio (CPR) Limit

2.

- (1) All costs prescribed under section 263 and under the Fifth Schedule to this Act, excluding those related to section 263 (1) (a), (b) and (h), in an accounting period the sum of which is eligible for deduction under the hydrocarbon tax shall be subject to a cost price ratio limit of 65% of gross revenues determined at the measurement points.
- (2) Where, as a result of subparagraph (1), any excess costs incurred not allowed for deduction for that year of assessment, then-
- (a) the costs may be allowed for deduction for the purposes of ascertaining the profits of the company for subsequent years of assessment provided that the total costs to be deducted shall not exceed the actual costs incurred;
 - (b) the total costs to be allowed as deduction in those subsequent years shall be such an amount that if added to the sum of the total costs to be allowed as deduction under subparagraph (1) shall not exceed the specified cost price ratio limit of 65%; and
 - (c) where under paragraph 2 (2) (b), any cost exceed the cost price ratio limit upon the termination of upstream petroleum operations related to crude oil, such costs shall not be deductible for purpose of calculation of the hydrocarbon tax.

SEVENTH SCHEDULE

Section 268 (3),

303 (1), 306 and 318

PETROLEUM FEES, RENTS AND ROYALTY

PART I—FEES

Fees payable for licences and leases

1. Commission shall through regulations publish the rates or fees payable in respect of the following-
 - (a) application for a petroleum exploration licence;
 - (b) application for a renewal of a petroleum mining lease;
 - (c) application to assign an interest or sublet a petroleum exploration licence, petroleum prospecting licence or petroleum mining lease;
 - (d) application to terminate or effect a partial or full surrender of a petroleum exploration licence, petroleum prospecting licence or petroleum mining lease;
 - (e) application for permit to operate a drilling rig;
 - (f) application for grant of field development plan approval and the related petroleum mining lease;
 - (g) application for the approval of the drilling of a well;
 - (h) permit to export samples for analysis;
 - (i) application to withdraw any of the applications in sub-subparagraph (a)-(h); and
 - (j) application for other fees as may be deemed necessary by the Commission.

PART II—RENTS AND BONUSES

Rents for Licences

2. Every petroleum prospecting licence and petroleum mining lease shall be subject to rent as prescribed in the relevant regulation and the rent shall be an amount per hectare per year.

Payment of fees before grant of licence or lease

- 3.

- (1) A petroleum prospecting licence and petroleum mining lease shall not be granted without prior payment of the applicable fees, applicable signature bonus, and the rent applicable to the first year.
- (2) A petroleum mining lease shall not be renewed without prior payments of the renewal bonus under this Act.

Penalty for default in payment of rent

4. Failure to pay the rent as prescribed in the relevant regulation shall result in a penalty as prescribed in the said regulation or any other enactment, provided that where no penalty is prescribed in the said regulation, there shall be an application of an interest rate of LIBOR or any other successor rate plus 10% to the outstanding payment in US Dollars and where the payment of the applicable rent is not made within three months, revocation of such licence or lease under this Act shall be initiated.

Verification and payment account

5. Any rents imposed under this section shall be paid into the Federation Account and verified by the Commission.

PART III—ROYALTIES

All Petroleum production subject to Royalties

6. All production of petroleum, including production tests, shall be subject to royalties on a non-discriminatory basis with respect to all licensee and lessees and shall be paid into the Federation Account and verified by the Commission and for royalty purposes condensates shall be treated as crude oil and natural gas liquids shall be treated as natural gas.

Measurement Point for the determination of production volumes

7.
 - (1) Royalties shall be determined on a monthly basis at the measurement points and where there is production from production tests under a petroleum prospecting licence, the Commission shall determine measurement point for such production and where there is no measurement equipment at a possible measurement point in the field at the commencement of this Act, or where logistical conditions make the installation of measurement equipment at a possible measurement point impractical or uneconomic in the opinion of the Commission, the Commission may approve procedures for determining the chargeable volumes at a deemed measurement point in the field based on measurements at the point of sale, export terminal or other point downstream of such deemed measurement point under the regulations or guidelines and the measurement of crude oil, condensates and natural gas liquids shall be in barrels and of natural gas in standard cubic feet and where so justified, the Commission may approve reporting of production of natural gas liquids in metric tons.

- (2) The chargeable volume for royalty purpose shall be calculated by ascertaining the quantity of natural gas, crude oil, condensates and natural gas liquids produced in the relevant month from each field operated by the licensee or lessee under a regulation or guideline.
- (3) Where natural gas liquids are extracted in a gas processing plant downstream of the measurement point, the rich natural gas volumes, still including the natural gas liquids, shall be measured at the measurement point and be the basis for royalty calculations and the value of such rich natural gas shall be the value of the marketable natural gas plus the natural gas liquids at the exit of the gas processing plant, less the gas processing costs and less the transport cost between the measurement point and the gas processing plant based on tariffs established by the Authority.
- (4) Natural gas liquids and liquid petroleum gases shall have the same royalty rates as the natural gas from which these products are derived.
- (5) The chargeable volume shall be measured at standard temperatures and pressures as defined by regulation or guidelines and production shall not include any-
 - (a) volumes burned, flared or vented with the approval of the Commission;
 - (b) volumes re-injected by the lessee into reservoirs for the purpose of improving or enhancing production of crude oil or for conservation of natural gas;
 - (c) volumes used in the upstream petroleum operations for the production of electricity or heat for exclusive use in the operations of the lessee; and
 - (d) water or sediments.
- (6) The obligation to install the necessary measurement equipment shall be that of the licensee or lessee and shall be certified by the Commission and the measurement procedures and equipment for measurement at and prior to the measurement point shall be established in regulations or guidelines.

Determination of price for royalty

8.

- (1) The royalties applicable to crude oil and condensates shall be based on the fiscal oil price determined for the field at the measurement points under applicable regulations or guidelines, and this price shall be determined by the Commission on the basis of information supplied by the lessees and from non-confidential independent publications, making such adjustments for quality and transport costs as appropriate to prices of comparable crude oils and condensates sold in the international market, as determined by the Commission, for which appropriate information is available and with the objective to approximate as reasonably as possible the average fair market value of the month of the crude oil and condensates for such month for such field.

- (2) The fiscal oil price for each field shall consider any quality differentials related to international crude oils and condensates and shall be an export parity price taking into consideration the deduction of transportation costs within Nigeria from the measurement points as determined by the Authority to export terminals.
- (3) Royalties applicable to natural gas shall be based on the fiscal gas price determined for the field at the measurement point under applicable regulations or guidelines and this price shall be determined by the Commission, taking into consideration submissions by the lessees, and shall be based on the netback value at the measurement point based on the composition of the natural gas in terms of marketable natural gas, ethane, propane, butane, pentanes and other natural gas liquids as may be derived by processing of the natural gas and the net back procedure shall take into consideration the type of natural gas markets to which the natural gas from the field is being sold, such as export markets, domestic wholesale markets, markets based on the aggregate gas price or other natural gas pricing framework as permitted under this Act and the procedure shall take into consideration conditioning costs, processing costs and transportation costs within Nigeria as determined by the Authority from the measurement point to the market, where the sales point is downstream of the measurement point, and where natural gas liquids are produced in the field, the total gross value of the liquids shall be taken into account in the determination of the total gross value of the natural gas for the purpose of the fiscal gas price.

Royalties in kind or cash

9.

- (1) The Commission shall receive the royalty in kind or in cash at its discretion and the payment shall be subject to notice periods and procedures as provided for in regulations or guidelines and where royalties are paid in cash the payments shall be based on the fiscal oil price and fiscal gas price.
- (2) The licensee or lessee shall pay royalties to the Commission within a period that is not more than one month after the end of every month during which the petroleum is produced or as the Commission may direct, with respect to-
 - (a) crude oil and condensates the royalties shall be based on the royalties based on production under paragraph 10 plus the royalties based on price under paragraph 11; and
 - (b) natural gas and natural gas liquids the royalties shall be based on the royalties based on production under paragraph 10.
- (3) Royalties shall be paid in US Dollars, however, for production delivered for local refining, royalties may be wholly or partly paid in Naira at Central Bank of Nigeria applicable exchange rate for the valuation of crude oil delivered.

- (4) The Commission shall inform the Minister responsible for Finance of instances where the Commission intends to levy royalties in kind rather than in cash.

Royalties based on production

10.

- (1) For the purpose of paragraph 9, royalties based on production shall be calculated on a field basis.
- (2) The royalty shall be at a rate per centum of the chargeable volume of the crude oil and condensates produced from the field area in the relevant month on terrain basis as follows-
- (a) onshore areas 15%;
 - (b) shallow water (up to 200m water depth) 12.5%;
 - (c) deep offshore (greater than 200m water depth) 7.5%; and
 - (d) frontier basins 7.5%.
- (3) For deep offshore fields with a production during a month of not more than 50,000 bopd, the royalty rate shall be 5% and the share of the production above 50,000 bopd shall be at the royalty rate specified in subparagraph (2).
- (4) Royalties for onshore fields and shallow water fields, including marginal fields, with crude oil and condensate production not more than 10,000 bopd during a month shall be at a rate per centum of the chargeable volume of the crude oil and condensates produced from the field area per production day during a month on trached basis as follows-
- (a) for the first 5,000 bopd 5%; and
 - (b) for the next 5,000 bopd, for the share of production over 5000 bopd 7.5%:
- Provided that fields with crude oil and condensate production more than 10,000 bopd during a month, the share of the production over 10,000 bopd per month shall be at the royalty rates specified under subparagraph (2).
- (5) With respect to paragraphs (3) and (4), where a single field covers two or more petroleum mining leases, the royalty shall be determined based on the total production from the field.
- (6) Royalty based on production for natural gas and natural gas liquids shall be at a rate of 5% of the chargeable volume and royalty rate for natural gas produced and utilised in-country shall be 2.5% of the chargeable volume.
- (7) Where a field is located partially in onshore and in shallow water or partially in shallow water and deep offshore areas, the weighted average royalty shall be calculated as per regulations.

Royalty by price

11.

(1) There shall be payable, in addition to the royalty set out in paragraph 10 for onshore, shallow water and deep offshore a royalty by price with respect to crude oil and condensates at the rates set out below-

(a) below US \$50 per barrel — 0%,

(b) at US \$100 per barrel — 5%,

(c) above US \$150 per barrel — 10%, and

(d) between US \$50 and US \$100 per barrel and between US \$100 and US \$150 per barrel the royalty by price shall be determined based on linear interpolation,

as an example, if in 2020 the price is US \$75 per barrel, the royalty by price shall be 2.5%, and the price levels mentioned in sub-subparagraphs (a), (b) (c) and (d) shall apply to the year 2020, and at the beginning of 2021 and of each succeeding calendar year these price levels shall be increased by 2% relative to the values of the previous year.

(2) There shall be no royalty by price for frontier acreages.

(3) Royalty derived from “royalty by price” shall be for the credit of Nigerian Sovereign Investment Authority.

12. Penalty for non-payment and outstanding payments of royalties and enforcement of payment where any royalty due and payable under this Act is not paid within two months after the month in which the royalty is due, then it qualifies to be a debt which shall attract-

(a) a sum equal to 10% of the amount of the royalty payable which shall be added to the royalty;

(b) in the case of foreign currency transactions, the outstanding payments due shall incur interest at the prevailing LIBOR or any other successor rate plus 10% point basis;

(c) in the case of Naira transactions, the outstanding payments due shall incur interest at the prevailing NIBOR plus 10% point basis;

(d) N10,000,000 or US Dollar equivalent on the first day the failure to pay the royalty occurs; and

(e) N2,000,000 or US Dollar equivalent for each day in which the failure continues.

Revocation, Seizure and Distrain

13. Where any fee, rent or royalty due under this Act is unpaid within three months after the month when it becomes due, whether legally demanded or not, the Commission may, in addition to any other remedy which may be available-
- (a) initiate revocation of such licence or lease under this Act; and
 - (b) enter into any land, property or premises possessed or occupied by the licensee or lessee in connection with the licence or lease, and-
 - (i) seize and distrain and sell as landlords may do for rents in arrears, any petroleum, petroleum products, engines, machinery, tools, implements or other effects belonging to the licensee or lessee which may be found in or upon the land, property or premises, and
 - (ii) out of money arising from the sale of the distress, retain and pay off the arrears of the fee, rent or royalty and also the costs and expenses incidental to the distress and sale, rendering the surplus, if any, to the licensee or lessee.

PART IV—SUPPLEMENTAL

Production Sharing, Profit Sharing and Risk Service Contracts

- 14.
- (1) Where the Commission decides to grant a petroleum prospecting licence or petroleum mining lease under contractual terms under section 85 of this Act, the Commission shall prepare the related model contract, which stipulates the fiscal and other provisions related to fees, rents, royalties for such contract, to be attached to such licence or lease.
 - (2) The model contract shall contain as a minimum, the provisions related to fees, rents, royalties, hydrocarbon tax and companies income tax stipulated in this Act.
 - (3) A model licence related to frontier acreages shall not contain contractual provisions under section 85 of this Act and shall only contain the minimum provisions related to fees, rents, royalties under paragraph 10 and companies income tax stipulated in this Act and upon the renewal of any petroleum mining leases, hydrocarbon tax and royalty based on price under paragraph 11 based on onshore conditions shall apply.
 - (4) For new acreage any production sharing contract shall have a cost limit of 70% based on total oil production, and where applicable condensates and natural gas liquids derived from associated gas, measured at the measurement point, and the minimum profit oil scale to Government in a production sharing contract shall be based on cumulative production per field as follows-
 - (a) up to and including 50 million barrels - 5%;

- (b) over 50 million barrels and up to and including 100 million barrels — 10%;
 - (c) over 100 million barrels and up to and including 350 million barrels — 15%;
 - (d) over 250 million barrels up to and including 750 million barrels — 25%;
 - (e) over 750 million barrels ad up to and including 1500 million barrels — 35%; or
 - (f) over 1500 million barrels — 45%.
- (5) There may be production sharing for associated or non-associated natural gas, to which only the rents, royalties and companies income tax applies under this Act, capital and operating costs related to making associated natural gas available at the measurement points can be recovered from cost oil.
- (6) The contractors shall be the licensees or lessees and shall thereby be entitled to the capital allowances under the Fifth Schedule.
- (7) The profit oil for crude oil under conversion contracts or for new acreages shall be determined as the total volume of crude oil, where applicable, condensates and natural gas liquids derived from associated gas, less the royalties and less the cost oil as defined in the model contract.
- (8) For production sharing purpose, the adjusted profit of a company for hydrocarbon tax shall be determined under section 263 (1) (b), which means that royalties and the value of profit oil delivered in kind or cash from all fields to the Federation Account shall be deductible for the purposes of determining the adjusted profits and the calculation shall be consolidated as per the two classes under section 267 and the capital allowances under the Fifth Schedule shall be applied.
- (9) For a production sharing contract subject to a conversion contract under this Act, the cost limit shall be 60%.

EIGHTH SCHEDULE

Section 53 (3)

Creation of the Ministry of Petroleum Incorporated

1. The Corporation sole known as the Ministry of Petroleum Incorporated (the Corporation) is established and shall continue to be a Corporation sole under that title.

2. The Corporation may sue and be sued in its said name and shall have perpetual succession and a corporate seal which may from time to time be broken, changed, altered and made anew as the Corporation deems fit, and, until a seal is provided under this section, a stamp bearing the inscription "Federal Ministry of Petroleum" may be used as the corporate seal.
3. The Corporation may enter into contracts and may acquire, purchase, take, hold and enjoy movable and immovable property of every description, and may convey, assign, surrender and yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property vested in the Corporation upon such terms as the Corporation deems fit.
4.
 - (1) All deeds and other instruments requiring the seal of the Corporation shall be sealed, with the seal of the Corporation in the presence of the Permanent Secretary and signed by the Permanent Secretary, and such signing shall be sufficient evidence that the said seal was duly and properly affixed and that the same is the lawful seal of the Corporation.
 - (2) Any other document requiring the signature of the Corporation shall be signed by the Permanent Secretary.
5. The Minister may, by order, vest in any public officer or authority any property, movable or immovable, for the time being vested in the Corporation and, upon the coming into operation of any such order, the property to which such order relates shall, without any conveyance, assignment or transfer, vest in such officer or authority for the like title, estate or interest and on the like tenure and for the like purposes as the same was vested or held immediately before the coming into operation of the order.

CHAPTER P13

PETROLEUM PROFITS TAX ACT

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CHAPTER P13

PETROLEUM PROFITS TAX ACT

An Act to impose a tax upon profits from the winning of Petroleum in Nigeria, to provide for the assessment and collection thereof and for purpose connected therewith.

[1959 No. 15. 1991 No. 21. 1996 No. 30. 1996 No.31. 1996 No. 32. 1998 No. 18. 1999 No. 30.]

[Commencement.]

[1st January 1958]

PART I

Preliminary

1. Short title

This Act may be cited as the Petroleum Profits Tax Act.

2. Interpretation

In this Act, unless the context otherwise requires-

“accounting period” in relation to a company engaged in petroleum operations, means-

- (a) a period of one year commencing on 1 January and ending on 31 December of the same year; or
- (b) any shorter period commencing on the day the company first makes a sale or bulk disposal of chargeable oil under a programme of continuous production and sales, domestic, export or both, and ending on 31 December of the same year; or
- (c) any period of less than a year being a period commencing on 1 January of any year and ending on the date in the same year when the company ceases to be engaged in petroleum operations,

and in the event of any dispute with respect to the date of the first sale of chargeable oil above or with respect to the date on which the company ceases to be engaged in petroleum operations, the Minister of Petroleum Resources shall determine the same and no appeal shall lie therefrom;

“adjusted profit” means adjusted profit for the purpose of section 9 of this Act;

“assessable profits” means assessable profits for the purpose of section 9 of this Act;

“assessable tax” means assessable tax ascertained under section 21 of this Act;

“Board” means the Federal Board of Inland Revenue established and constituted in accordance with section 1 of the Companies Income Tax Act;
[Cap. C21]

“casinghead petroleum spirit” means any liquid hydrocarbons obtained in Nigeria from natural gas by separation or by any chemical or physical process but before the same has been refined or otherwise treated;

“chargeable natural gas” in relation to a company engaged in petroleum operations means natural gas actually delivered by such company to the Nigerian National Petroleum Corporation under a Gas Sales Contract but does not include natural gas taken by or on behalf of the Government of the Federation in pursuance of this Act;

“chargeable profits” means chargeable profits for the purpose of section 9 of this Act;

“chargeable tax” means chargeable tax ascertained under section 22 of this Act and imposed under this Act;

“Commission” means the Nigerian Upstream Petroleum Regulatory Commission, established under the Petroleum Industry Act, No. 6, 2021.
[2023 No.1, s.14]

“company” means anybody corporate incorporated under any law in force in Nigeria or elsewhere;

“crude oil” means any oil (other than oil extracted by destructive distillation from coal, bituminous shales or other stratified deposits) won in Nigeria either in its natural state or after the extraction of water, sand or other foreign substance therefrom but before any such oil has been refined or otherwise treated;

“disposal” and **“disposed of”**, in relation to chargeable oil owned by a company engaged in petroleum operations, mean or connote respectively-

- (a) delivery, without sale, of chargeable oil to; and
- (b) chargeable oil delivered, without sale, to a refinery or to an adjacent storage tank for refining by the company;

“G-Factor” means gas production cost adjustment factor;

“High Court” means a High Court in Nigeria within whose jurisdiction-

- (a) in relation to any offence under this Act, the place is situated where such offence is, for the purposes of this Act, deemed to have occurred;
- (b) in relation to any suit for tax or appeal against an assessment of tax, the place is situated where the return under section 33 of this Act was submitted or where the assessment of the tax was made as the case may be;

- (c) in relation to any direction under section 32 (2) of this Act, the place is situated from which the direction was issued; and
- (d) in relation to any claim or other matter which is subject to appeal in like manner as an assessment, or to which the provisions of section 38 of this Act apply with any modifications, the place is situated from which the claim or other matter was refused by the Board;

“intangible drilling costs” means all expenditure for labour, fuel, repairs, maintenance, hauling, and supplies and materials (not being supplies and materials for well cement, casing or other well fixtures) which are for or incidental to drilling, cleaning, deepening or completing wells or the preparation thereof incurred in respect of-

- (a) determination of well locations geological studies and topographical and geographical surveys preparatory to drilling;
- (b) drilling, shooting, testing and cleaning wells;
- (c) cleaning, draining and levelling land, road building and the laying of foundations;
- (d) erection of rigs and tankage assembly and installation of pipelines and other plant and equipment required in the preparation or drilling of wells producing petroleum;

“liquified natural gas” means natural gas in its liquid state at approximately atmospheric pressure;

“loss” means a loss ascertained in like manner as an adjusted profit;

“Minister” means the Minister charged with responsibility for matters relating to taxes on incomes and profits;

“MMcf” means one million cubic feet;

“natural gas” means gas obtained in Nigeria from boreholes and wells and consisting primarily of hydrocarbons;

“Nigeria” includes the submarine areas beneath the territorial waters of Nigeria and submarine areas beneath any other waters which are or at any time shall in respect or mines and minerals become subject to the legislative competence of the National Assembly;

“non-productive rents” means and includes the amount of any rent as to which there is provision for its deduction from the amount of any royalty under a petroleum prospecting license or oil mining lease to the extent that such rent is not so deducted;

“oil mining lease” means a lease granted to a company, under the Minerals and Mining Act, for the purpose of winning petroleum or any assignment of such lease;

[Cap. MI2.]

“oil prospecting licence” means a licence granted to a company, under the Minerals and Mining Act, for the purpose of winning petroleum, or any assignment of such licence;

“person” includes a company and any unincorporated body of persons;

“petroleum” means any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in Nigeria but does not include liquefied natural gas, coal, bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation;

“petroleum operations” means the winning or obtaining and transportation of petroleum or chargeable oil in Nigeria by or on behalf of a company for its own account by any drilling, mining, extracting or other like operations or process, not including refining at a refinery, in the course of a business carried on by the company engaged in such operations, and all operations incidental thereto and any sale of or any disposal of chargeable oil by or on behalf of the company;

“profits” means profits for the purpose of section 9 of this Act;

“resident in Nigeria” in relation to a company, means a company the control and management of the business of which are exercised in Nigeria;

“royalties” means and includes-

- (a) the amount of any rent as to which there is provision for its deduction from the amount of any royalties under an oil prospecting licence or oil mining lease to the extent that such rent is so deducted; and
- (b) the amount of any royalties payable under any such licence or lease less any such rent deducted from those royalties.

“tax” means chargeable tax.

PART II

Administration

3. Powers and duties of the Board

(1) Subject to the provisions of this Act-

- (a) the due administration of this Act and the tax shall be under the care and management of the Board which may do all such acts as may be deemed necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected in a manner to be prescribed by the Minister;
- (b) whenever the Board shall consider it necessary with respect to any tax due, the Board may acquire, hold and dispose of any property taken as security for or in satisfaction of any tax or any judgment debt due in respect of any tax and shall account for any such property and the proceeds of sale thereof in a manner to be prescribed as aforesaid;

- (c) the Board may sue and be sued in its official name and, subject to any express provisions under any subsidiary legislation or otherwise, the Board may authorise any person to accept service of any document to be sent, served upon or delivered to the Board and to represent the Board in any proceedings:
- (d) subject to such conditions as the Board may specify the Board may by notice in the Federal Gazette direct that any information, return or documents required to be supplied to such other person whether within or outside Nigeria as the Board may direct;
- (e) the Board may by notice in the Federal Gazette or in writing authorise any person within or without Nigeria to-
 - (i) perform or exercise, on behalf of the Board. any power or duty conferred upon the Board other than the powers or duties specified in the First Schedule; and
[First Schedule.]
 - (ii) receive any notice or other document to be given. delivered or served upon the Board under or in consequence of this Act or any subsidiary legislation made thereunder;
- (f) in the exercise of the powers and duties conferred upon the Board. the Board shall be subject to the authority, direction, and control of the Minister and any written direction, order or instruction given by him after consultation with the chairman of the Board shall be carried out by the Board:

Provided that the Minister shall not give any direction, order or instruction in respect of any particular company which would have the effect of requiring the Board to raise an additional assessment upon such company or to increase or decrease any assessment made or to be made or any penalty imposed or to be imposed upon or any relief given or to be given to or to defer the collection of any tax, penalty or judgment debt due by such company, or which would have the effect of altering the normal course of any proceedings, whether civil or criminal, relating either to the recovery of any tax or penalty or any offence relating to tax;

- (g) every claim, objection, appeal, representation or the like made by any person under any provision of this Act or of any subsidiary legislation made thereunder shall be made in accordance with such Act and legislation; and
- (h) in any claim or matter or upon any objection or appeal under this Act, any act, matter or thing done by or with the authority of the Board, in pursuance of any provisions of this Act shall not be subject to challenge on the ground that such act matter or thing was not or was not proved to be in accordance with any direction, order or instruction given by the Minister.

4. Signification and execution of powers, duties, etc.

- (1) Anything required to be done by the Board, in relation to the powers or duties specified in the First Schedule of this Act, may be signified under the hand of the chairman of the Board, or

of an officer of the Federal Inland Revenue Department who has been authorised by the Board to signify from time to time, anything done or to be done by the Board in respect of such powers or duties.

[First Schedule.]

- (2) Any authorisation given by the Board under or by virtue of this Act shall be signified under the hand of the chairman of the Board unless such authority is notified in the Federal Gazette.
- (3) Subject to subsection (1) of this section, any notice or other document to be given under this Act shall be valid if-
 - (a) it is signed by the chairman of the Board or by any person authorised by him; or
 - (b) such notice or document is printed and the official name of the Board is duly printed or stamped thereon.
- (4) Every notice, authorisation or other document purporting to be a notice, authorisation or other document duly given and signified, notified or bearing the official name of the Board in accordance with the provisions of this section, shall be deemed to be so given and signified, notified or otherwise without further proof, until the contrary is shown.

5. Official secrecy, etc.

- (1) Every person having any official duty or being employed in the administration of this Act shall regard and deal with all documents, information, returns, assessment lists and copies of such lists relating to the income, chargeable profits or items thereof of any company, as secret and confidential.
- (2) Every person having possession of or control over any documents, information, returns or assessment lists or copies of such lists relating to tax or petroleum operations or the amount and value of chargeable oil won by any company, who at any time communicates or attempts to communicate such information or anything contained in such documents, returns, lists, or copies to any person-
 - (a) other than a person to whom he is authorised by the Minister to communicate it; or
 - (b) otherwise than for the purpose of this Act or of any Act or law, relating to a tax upon income, in force in any part of Nigeria,
- (c) shall be guilty of an offence.
- (3) No person appointed under or employed in carrying out the provisions of this Act shall be required to produce in any court, any return, document or assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Act except as may be necessary for the purpose of carrying into effect the provisions of this Act, or in order to institute a prosecution, or in the course of a prosecution for any offence committed in relation to tax.
- (4) Where under any law in force in any territory outside Nigeria provision is made for the

allowance of relief from income tax and similar taxes in respect of the payment of income tax and similar taxes in Nigeria or for the exemption of income from income tax and similar taxes in respect of income subject to income tax and similar taxes in Nigeria, the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorised officers of the Government in that territory of such facts as may be necessary to enable the proper relief or exemption to be given in cases where relief or exemption is claimed from income tax and similar taxes in Nigeria or from income tax and similar taxes in that territory, For the purposes of this subsection, tax (as defined in this Act) shall be regarded as a tax similar to an income tax.

- (5) Notwithstanding anything contained in this section, the Board may permit the Auditor-General for the Federation or any officer duly authorised in that behalf to have such access to any records or documents as may be necessary for the performance of his official duties; and the Auditor-General for the Federation or any such officer shall be deemed to be a person employed in carrying out the provisions of this Act for the purpose of this section.

6. Rules and forms

- (1) The Minister may, from time to time, make rules generally for the carrying out of the provisions of this Act.
- (2) The Board may, from time to time, specify the form of returns, claims, statements and notices under this Act.

7. Service and signature of notices

- (1) Except where it is provided by this Act that service shall be effected either personally or by registered post the provisions of section 26 of the Interpretation Act shall apply to the service of a notice, if such notice is addressed in accordance with the provisions of subsection (3) of this section.

[Cap. 123.]

- (2) Where a notice is sent by registered post it shall be deemed to have been served on the day succeeding the day on which the addressee of the registered letter containing the notice would have been informed in the ordinary course of events that such notice is addressed in accordance with the provisions of subsection (3) of this section:

Provided that a notice shall not be deemed to have been served under this subsection if the addressee proves that no notification, informing him of the fact that the registered letter was awaiting him at a post office, was left at the address given on such registered letter.

- (3) A notice to be served in accordance with subsection (1) or (2) of this section shall be addressed-
 - (a) in the case of a company incorporated in Nigeria to the registered office of the Company; and
 - (b) in the case of a company incorporated outside Nigeria, either to the individual authorised

to accept service of process under the Companies and Allied Matters Act at the address filed with the Registrar-General, or to the registered office of the company wherever it may be situated.

[Cap. C20.]

- (4) Any notice to be given, sent or posted under this Act may be served by being left at the appropriate office or address determined under subsection (3) of this section unless such address is a registered post office box number.

PART III

Imposition of tax and ascertainment of profits

8. Charge of tax

There shall be levied upon the profits of each accounting period of any company engaged in petroleum operations during that period a tax to be charged, assessed and payable in accordance with the provisions of this Act.

9. Ascertainment of profits, adjusted profit, assessable, profits and chargeable profits

- (1) Subject to any express provisions of this Act, in relation to any accounting period, the profits of that period of a company shall be taken to be the aggregate of-
 - (a) the proceeds of sale of all chargeable oil sold by the company in that period;
 - (b) the value of all chargeable oil disposed of by the company in that period; and
 - (c) all income of the company of that period incidental to and arising from any one or more of its petroleum operations.
- (2) For the purposes of subsection (1) (b) of this section, the value of any chargeable oil so disposed of shall be taken to be the aggregate of-
 - (a) the value of that oil as determined, for the purpose of royalty, in accordance with the provisions of any enactment applicable thereto and any financial agreement or arrangement between the Federal Government of Nigeria and the company;
 - (b) any cost of extraction of that oil deducted in determining its value as referred to in paragraph (a) of this subsection; and
 - (c) any cost incurred by the company in transportation and storage of that oil between the field of production and the place of its disposal.
- (3) The adjusted profit of an accounting period shall be the profits of that period after the deductions allowed by subsection (1) of section 10 of this Act and any adjustments to be made in accordance with the provisions of section 14 of this Act.

- (4) The assessable profit of an accounting period shall be the adjusted profit of that period after any deduction allowed by section 20 of this Act.
- (5) The chargeable profits of an accounting period shall be the assessable profits of that period after the deduction allowed by section 20 of this Act.

10. Deductions

- (1) In computing the adjusted profit of any company of any accounting period from its petroleum operations, there shall be deducted all outgoings and expenses wholly, exclusively and necessarily incurred, whether within or without Nigeria, during that period by such company for the purpose of those operations, including but without otherwise expanding or limiting the generality of the foregoing-

(1a) any amount contributed to a fund, scheme or arrangement approved by the Commission for the purpose of decommissioning and abandonment, subject to the production of the Statement of Account of the decommissioning and abandonment fund:

Provided that the surplus or residue of the fund after decommissioning and abandonment of the field shall be subject to tax under this Act.

[2023 No.1, s.15]

- (a) rents incurred by the company for that period in respect of land or buildings occupied under an oil prospecting licence or an oil mining lease for disturbance of surface rights or for any other like disturbance;

[1996 No. 31.]

- (b) all non-productive rents, the liability for which was incurred by the company during that period;

[1999 No. 30.]

- (c) all royalties, the liability for which was incurred by the company during that period in respect of natural gas sold and actually delivered to the Nigerian National Petroleum Corporation, or sold to any other buyer or customer or disposed of in any other commercial manner;

[1996 No. 31.]

- (d) all royalties the liability for which was incurred by the company during that period in respect of crude oil or of casinghead petroleum spirit won in Nigeria:

- (e) all sums the liability for which was incurred by the company to the Federal Government of Nigeria during that period by way of customs or excise duty or other like charges levied in respect of machineries, equipment and goods used in the company's petroleum operation; and

[1999 No. 30.]

- (f) sums incurred by way of interest upon any money borrowed by such company, where the Board is satisfied that the interest was payable on capital employed in carrying on its petroleum operations;

- (g) all sums incurred by way of interest on any inter-company loans obtained under terms prevailing in the open market, that is the London Inter-Bank Offer Rate, by companies that engage in crude oil production operations in the Nigerian oil industry;

[1999 No. 30.]

- (h) any expense incurred for repair of premises, plant machinery, or fixtures employed for the purpose of carrying on petroleum operations or for the renewal, repair or alteration of any implement, utensils or articles so employed;
- (i) debts directly incurred to the company and proved to the satisfaction of the Board to have become bad or doubtful in the accounting period for which the adjusted profits is being ascertained notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of that period:

Provided that-

- (i) the deduction to be made in respect of a doubtful debt shall not exceed that portion of the debt which is proved to have become doubtful during that accounting period, nor in respect of any particular debt shall it include any amount deducted under the provisions of this paragraph in determining the adjusted profit of a previous accounting period;
- (ii) all sums recovered by the company during that accounting period on account of amounts previously deducted in respect of bad or doubtful debts shall, for the purposes of subsection (1) (c) of section 9 of this Act, be treated as income of that company of that period; and
- (iii) it is proved to the satisfaction of the Board that the debts in respect of which a deduction is claimed were either-
 - (a) included as a profit from the carrying on of petroleum operations in the accounting period in which they were incurred; or
 - (b) advances made in the normal course of carrying on petroleum operations not being advances on account of any item falling within the provisions of section 13 of this Act;
- (j) any other expenditure, including tangible drilling costs directly incurred in connection with drilling and appraisal of a development well but excluding an expenditure which is qualifying expenditure for the purpose of the Second Schedule to this Act, and any expense or deduction in respect of a liability incurred which is deductible under any other provision of this section-

[1996 No. 31.]

- (i) any expenditure (tangible or intangible) directly incurred in connection with the drilling of an exploration well and the next two appraisal wells in the same field whether the wells are productive or not

- (ii) where a deduction may be given under this section in respect of any such expenditure that expenditure shall not be treated as qualifying drilling expenditure for the purpose of the Second Schedule;

[Second Schedule.]

- (k) any contributions to a pension, provident or other society, scheme or fund which may be approved, with or without retrospective effect, by the Board subject to such general conditions or particular conditions in the case of any such society, scheme or fund as the Board may prescribe:

Provided that any sum received by or the value of any benefit obtained by such company, from any approved pension, provident or other society, scheme or fund, in any accounting period of that company shall, for the purposes of subsection (1) (c) of section 9 of this Act, be treated as income of that company of that accounting period;

- (l) all sums, the liability of which was incurred by the company during that period to the Federal Government, or to any State or Local Government Council in Nigeria by way of duty, customs and excise duties, stamp duties, education tax, tax (other than the tax imposed by this Act) or any other rate, fee or other like charges;

[1996 No.3]

- (m) such other deductions as may be prescribed by any rule made under this Act.

- (2) Where a deduction has been allowed to a company under this section in respect of any liability of the company and such liability or any part thereof is waived or released the amount of the deduction or the part thereof corresponding to such part of the liability shall for the purposes of subsection (1) (c) of section 9 of this Act, be treated as income of the company of its accounting period in which such waiver or release was made or given.

11.Incentives for utilisation of associated gas

- (1) The following incentives shall apply to a company engaged in the utilisation of associated gas, that is-

[1998 No.19.]

- (a) investment required to separate crude oil and gas from the reservoir into usable products shall be considered as part of the oil field development;
- (b) capital investment on facilities equipment to deliver associated gas in usable form at utilisation or designated custody transfer points shall be treated for tax purposes, as part of the capital investment for oil development;
- (c) capital allowances, operating expenses and basis of tax assessment shall be subject to the provisions of this Act and the tax incentives under the revised memorandum of understanding.

- (2) The incentives specified under subsection (1) of this section shall be subject to the following conditions, that is-
- (a) condensates extracted and re-injected into the crude oil stream shall be treated as oil but those not re-injected shall be treated under existing tax arrangement;
 - (b) the company shall pay the minimum amount charged by the Minister of Petroleum Resources for any gas flared by the company;
 - (c) the company shall, where practicable, keep the expenses incurred in the utilisation of associated gas separate from those incurred on crude oil operation and only expenses not able to be separated shall be allowable against the crude oil income of the company under this Act;
 - (d) expenses identified as incurred exclusively in the utilization of associated gas shall be regarded as gas expenses and be allowable against the gas income and profit to be taxed under the Companies Income Tax Act;
[Cap. C21.]
 - (e) only companies which invest in natural gas liquid extraction facilities to supply gas in usable form to downstream projects, including aluminium smelter and methanol, Methyl Tertiary Butyl Ether and other associated gas utilisation projects shall benefit from the incentives;
 - (f) all capital investments relating to the gas-to-liquids facilities shall be treated as chargeable capital allowance and recovered against the crude oil income:
[1999 No. 30.]
 - (g) gas transferred from the natural gas liquid facility to the gas-to-liquid facilities shall be at zero per cent tax and zero per cent royalty.
[1999 No. 30.]

12. Application of incentives to utilisation of non-associated gas

All incentives granted in respect of investments in associated gas shall be applicable to investments in non-associated gas.

[1999 No. 30.]

13. Deductions not allowed

- (1) Subject to the express provisions of this Act, for the purpose of ascertaining the adjusted profit of any company of any accounting period from its petroleum operations, no deduction shall be allowed in respect of-
- (a) disbursements or expenses not been money wholly and exclusively laid out or expended, or any liability not being a liability wholly or exclusively incurred for the purpose of those operations;
 - (b) any capital withdrawn or any sum employed or intended to be employed as capital;

- (c) any capital employed in improvements as distinct from repairs;
- (d) any sum recoverable under on insurance or contract of indemnity;
- (e) rent of or cost of repairs to any premises or port of premises not incurred for the purposes of those operations;
- (f) any amounts incurred in respect of any income tax, profits tax or other similar tax whether charged within Nigeria or elsewhere;
- (g) the depreciation of any premises, buildings, structures, works of a permanent nature, plant, machinery or fixtures;
- (h) any payment to any provident, savings widows' and orphans' or other society scheme or fund, except such payments as are allowed under subsection (1) (g) of section 10 of this Act;
- (i) any customs duty on goods (including articles or any other thing) imported by the company-

[1996 No.31.]

- (i) for resale or for personal consumption of employees of the company; or
 - (ii) where goods of the same quality to those so imported are produced in Nigeria and are available, at the time the imported goods were ordered by the company for sale to the public at the prices less or equivalent to the cost to the company of the imported goods;
 - (j) any expenditure for the purchase of information relating to the existence and extent of petroleum deposits.
- (2) Notwithstanding the provisions of subsection that period (1) (d) of section 10 of this Act, in computing the adjusted profit of any company of any accounting period no deduction shall be allowed in respect of sums incurred by way of interest during that period upon any borrowed money where such money was borrowed from a second company if during that period-
- (a) either company has an interest in the other company: or
 - (b) both have interests in another company either directly or through other companies; or
 - (c) both are subsidiaries of another company.
- (3) For the purposes of subsection (2) of this section-
- (a) a company shall be deemed to be a subsidiary of another company if and so long as an interest in it is held by that other company either directly or through any other company or companies;

- (b) an interest means a beneficial interest in issued share capital (by whatever name called);
and
- (c) the Board shall disregard any such last-mentioned interest which in their opinion is insignificant or remote, or where in their opinion that interest that arises from a normal market investment and the companies concerned have no other dealings or connection between each other.

14.Exclusion of certain profits, etc.

Where a company engaged in petroleum operations is engaged in the transportation of chargeable oil by ocean going oil-tankers operated by or on behalf of the company from Nigeria to another territory then such adjustments shall be made in computing an adjusted profit or a loss as shall have the effect of excluding therefrom any profit or loss attributable to such transportation.

15.Artificial transactions, etc.

- (1) Where the Board is of opinion that any disposition is not in fact given effect to or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, the Board may disregard any such disposition or direct that such adjustments shall be made as respects liability to tax as the Board considers appropriate so as to counteract the reduction of liability to tax effected, or reduction which would otherwise be effected, by the transaction and the companies concerned shall be assessable accordingly. In this subsection, the expression “**disposition**” includes any trust, grant, covenant, agreement or arrangement.
- (2) For the purpose of this section, the following transactions shall be deemed to be artificial or fictitious, namely, transactions between persons one of whom has control over the other or between persons both of whom are controlled by some other person which, in the opinion of the Board, have not been made on the terms which might fairly have been expected to have been made by independent person engaged in the same or similar activities dealing with one another at arm's length.
- (3) Nothing in this section shall prevent the decision of the Board in the exercise of any discretion given to the Board by this section from being questioned in an appeal against an assessment in accordance with Part VIII of this Act and on the hearing of any such appeal the appropriate Appeal Commissioners or the Court may confirm or vary any such decision including any directions made under this section.

16.Assessable profits and losses

- (1) Subject to the provisions of this section, the assessable profits of any company for any accounting period shall be the amount of the adjusted profit of that period after the deduction of-
 - (a) the amount of any loss incurred by that company during any previous accounting period;
and
 - (b) in a case to which section 18 of this Act applies, the amount of any loss which under that section is deemed to be a loss incurred by that company in its trade or business during its

first accounting period.

- (2) A deduction under subsection (1) of this section shall be made so far as possible from the amount, if any, of the adjusted profit of the first accounting period after that in which the loss was incurred, and, so far as it cannot be so made, then from the amount of the adjusted profit of the next succeeding accounting period and so on.
- (3) Within five months after the end of any accounting period of a company or within such further time as the Board may permit in writing in any instance, the company may elect in writing that a deduction or any part thereof to be made under this section shall be deferred to and be made in the succeeding accounting period, and may so elect from time to time in any succeeding accounting period.

17. Trade or business sold or transferred to a Nigerian company

- (1) Without prejudice to section 28 of this Act, where a trade or business of petroleum operations carried on in Nigeria by a company incorporated under any law in force in Nigeria is sold or transferred to a Nigerian company for the purposes of better organisation of that trade or business or the transfer of its management to Nigeria and any asset employed in that trade or business is so sold or transferred, then, if the Board is satisfied that one of those companies has control over the other or that both companies are controlled by some other person or are members of a reorganised group of companies the provisions set out in subsection (2) of this section shall have effect.
 - (2) In a case to which subsection (1) of this section applies, the Board may in its discretion-
 - (a) if, on or before the date on which the trade or business is so sold or transferred, the first sale of or bulk disposal of chargeable oil by or on behalf of the company selling or transferring the trade or business has occurred, but the first sale of or bulk disposal of chargeable oil by or on behalf of the Nigerian company acquiring that trade or business has not occurred-
 - (i) direct that the first accounting period of the Nigerian company shall be the period of twelve months commencing on the date on which the sale or transfer of the trade or business takes place, or commencing on such date within the calendar month in which the sale or transfer takes place as may be selected by the Nigerian company with the approval of the Board; and
 - (ii) for the purposes of subsection (2) (a) (i) of this section, an accounting period as respects the Nigerian company shall be a period of twelve months commencing on the date on which the sale or transfer of the trade or business to the Nigerian company takes place, or commencing on such date within the calendar month in which the sale or transfer takes place as may be selected by the Nigerian company with the approval of the Board and the definition of “**accounting period**” in section 2 of this Act shall be construed accordingly, but without prejudice to the continued application in respect of the Nigerian company of the provisions of paragraphs (b), (c) and (d) of that definition;

[Second Schedule.]

- (b) direct that for the purposes of the Second Schedule the asset sold or transferred to the Nigerian company by the company selling or transferring the trade or business shall be deemed to have been sold for an amount equal to the residue of the qualifying expenditure on the asset on the day following the day on which the sale or transfer thereof occurred; and
- (c) direct that the Nigerian company acquiring the asset so sold or transferred shall not be entitled to any initial allowance in respect of that asset, and shall be deemed to have received all allowances given to the company selling or transferring the trade or business in respect of the asset under the Second Schedule and any allowances deemed to have been received by that company under the provisions of this paragraph:

Provided that the Board in its discretion:

- (i) may require the company selling or transferring the trade or business or the Nigerian company acquiring that trade or business, to guarantee or give security, to the satisfaction of the Board, for payment in full of all tax due or to become due from the company selling or transferring the trade or business; and
- (ii) may impose such conditions as it sees fit on either of the companies aforesaid or on both of them;

and in the event of failure by that company or, as the case may be, those companies to carry out or fulfil the guarantee or conditions, the Board may revoke the direction and may make all such additional assessments or repayment of tax as may be necessary to give effect to the revocation.

(3) In this section-

“Nigerian company” means any company the control and management of whose activities are exercised in Nigeria; and

“references to a trade or business” shall include references to any part thereof.

18. Trade or business transferred under the Companies and Allied Matters Act

- (1) Where in pursuance of the provisions of Part X of the Companies and Allied Matters Act, a company (in this subsection referred to as “the Reconstituted Company”) is incorporated under that Act to carry on any trade or business of petroleum operations previously carried on in Nigeria by a foreign company and the assets employed in Nigeria by the foreign company in that trade or business vest in the reconstituted company, then, if the Board is satisfied that the trade or business carried on by the Reconstructed Company immediately after the incorporation of that company under that Act is not substantially different in nature from the trade or business previously carried on in Nigeria by the foreign company, the provisions set out in subsection (2) of this section shall have effect, notwithstanding anything in this Act to the contrary.

[Cap.C20]

- (2) The following provisions shall have effect in a case to which subsection (1) of this section

applies, namely-

- (a) if as respects the trade or business previously carried on in Nigeria by the foreign company the first sale of or bulk disposal of chargeable oil by or on behalf of the foreign company has occurred on or before the date on which the Reconstituted Company is incorporated-
 - (i) the first accounting period of the Reconstituted Company shall be the period of twelve months commencing on the date on which that Company is incorporated, or commencing on such date within the calendar month in which the company is incorporated as may be selected by the company with the approval of the Board; and
 - (ii) for the purpose of subsection (2) (a) (i) of this section, an accounting period as respects the Reconstituted Company shall be a period of twelve months commencing on the date on which that company is incorporated, or commencing on such date within the calendar month in which the Reconstituted Company is incorporated as may be selected by the Company with the approval of the Board, and the definition of “**accounting period**” in section 2 of this Act shall be construed accordingly, but without prejudice to the continued application in respect of the Reconstituted Company of the provisions of paragraphs (b), (c) and (d) of that definition;
- (b) for the purpose of the Second Schedule to this Act, the assets so vested in the Reconstructed Company shall be deemed to have been sold to it, on the day of its incorporation, for an amount equal to the residue of the qualifying expenditure thereon on the day following the day on which the trade or business previously carried on in Nigeria by the foreign Company ceased;
[Second Schedule]
- (c) the Reconstructed Company shall not be entitled to any initial allowances as respects those assets, and shall be deemed to have received all allowances given to the foreign Company in respect of those assets under the Second Schedule and any allowances deemed to have been received by the foreign company under the provisions of this paragraph or section 17 of this Act; and
- (d) the amount of any loss incurred during any accounting period by the foreign company in the said trade or business previously carried on by it in Nigeria, being a loss which has not been allowed against any assessable profits of any accounting period of that foreign company, shall be deemed to be a loss incurred by the Reconstructed Company in its trade or business during its first accounting period; and the amount of that loss shall in accordance with the provisions of section 16 of this Act, be deducted from the adjusted profits of the Reconstituted Company:

Provided that:

- (i) no deduction shall be made under this paragraph in respect of the loss aforesaid except to extent, if any, to which it is proved by the Reconstituted Company to the satisfaction of the Chief Petroleum Engineer in the civil service of the Federation that the loss was not the result of any damage or destruction caused by any military or

other operation connected with the civil war in which Nigeria was engaged;

- (ii) notwithstanding the foregoing proviso, the President may by order, direct that, to the extent specified in the direction, a deduction under this paragraph shall be made in respect of a loss which is the result of any damage or destruction caused by any military or other operations mentioned in that proviso:

Provided however, that no deduction in respect of any loss to which this paragraph applies shall be made unless within two years after the incorporation of the Reconstituted Company a claim for that deduction is lodged by that company with the Chief Petroleum Engineer aforesaid and a copy of the claim is forwarded by that company to the Board.

- (3) In this section “**foreign company**” means a company incorporated outside Nigeria before 18 November 1968, and having on that date an established place of business in Nigeria.

19. Board may call for returns and information relating to certain assets, etc.

For the purposes of sections 17 and 18 of this Act, the Board may by notice require any person (including a company to which any assets are sold or transferred, or in which any assets have vested in pursuance of Part X of the Companies and Allied Matters Act), to complete and deliver to the Board any returns specified in the notice or any such information as the Board may require about the assets; and it shall be the duty of that person to comply with requirements of any such notice within the period specified in the notice not being a period of less than 21 days from the service thereof.

[Cap. C20.]

20. Chargeable profits and capital allowances

- (1) The chargeable profits of any company of any accounting period shall be the amount of the assessable profits of that period after the deduction of any amount to be allowed in accordance with the provisions of this section.

- (2) There shall be computed the aggregate amount of all allowances due to the company under the provisions of the Second Schedule for the accounting period.

[Second Schedule.]

- (3) In calculating the amount of the deduction to be allowed under this section for the accounting period, the limitation imposed by subsection (4) of this section shall be applied to ensure that the amount of any tax chargeable on the company for that period shall be not less than fifteen percent of the tax which would be chargeable on the company for that period if no deduction were to be made under this section for that period.

- (4) The amount to be allowed as a deduction under subsection (1) in respect of the said allowances shall be-

- (a) the aggregate amount computed under subsection (2) of this section; or

- (b) a sum equal to 85% of the assessable profits of the accounting period less 170% of the total amount of the deduction allowed as petroleum investment allowance computed under the

Second Schedule to this Act for that period.

whichever is the less.

[Second Schedule.]

- (5) Where the total amount of the allowances computed under subsection (2) of this section cannot be deducted under subsection (1) of this section owing to there being an insufficiency of or no assessable profits of the accounting period or to the limitation imposed posed by subsection (4) of this section such total amount or the part thereof which has not been so deducted as the case may be, shall be added to the aggregate amount to be computed under subsection (2) of this section for the following accounting period of the company, and thereafter shall be deemed to be an allowance due to the company, under the provisions of the Second Schedule to this Act for that following accounting period.

PART IV

Ascertainment of assessable tax and of chargeable tax

21. Assessable tax

- (1) The assessable tax for any accounting period of a company shall be an amount equal to 85% of its chargeable profits of that period.
- (2) Where a company has not qualified for treatment under paragraph 6 (4) of the Second Schedule to this Act, that is to say, where a company has not yet commenced to make a sale or bulk disposal of chargeable oil under a programme of continuous production and sales as at 1 April 1977, its assessable tax for any accounting period during which it has not fully amortised all pre-production capitalised expenditure due to it less the amount to be retained in the book as provided for in paragraph 6 of the Second Schedule to this Act shall be 65.75% of the chargeable profits for that period.

[Second Schedule.]

22. Chargeable tax

- (1) A crude oil producing company which executed a Production Sharing Contract with the Nigerian National Petroleum Corporation in 1993 shall, throughout the duration of the Production Sharing Contract, be entitled to claim an investment tax credit allowance as an offset against tax in accordance with the provision of the Production Sharing Contract.
[1999 No. 30.]
- (2) The investment tax credit rate applicable to the contract area shall be 50% flat rate of chargeable profit for the duration of the Production Sharing Contract.
[1999 No. 30.]
- (3) In computing the tax payable, the investment tax credit shall be applicable in full to petroleum operations in the contract area such that the chargeable tax is the amount of the assessable tax less the investment tax credit.

[1999 No. 30.]

- (4) The chargeable tax computed under subsection (3) of this section shall be split between the Nigerian National Petroleum Corporation and the crude oil producing company in accordance with the proportion of the percentage of profit of oil split.

[1999 No. 30.]

- (5) In this section-

“**contract area**” means the contract area as defined in the Production Sharing Contract:

“**Production Sharing Contract**” has the meaning assigned to it in the Deep Offshore and Inland Basin Production Sharing Contracts Act.

[1999 No. 30. Cap. D3.]

23. Additional chargeable tax payable in certain circumstances

- (1) Where, for any accounting period of a company, the amount of the chargeable tax for that period, calculated in accordance with the provisions of this Act other than this section, is less than the amount mentioned in subsection (2) of this section, the company shall be liable to pay an additional amount of chargeable tax for that period equal to the difference between those two amounts.

[2023 No.1, s.16]

- (2) The amount referred to in subsection (1) of this section is, for any accounting period of a company, the amount which the chargeable tax for that period, calculated in accordance with the provisions of this Act, would come to, if the reference in section 9 (1) (a) and (b) of this Act to the proceeds of sale were a reference to the amount obtained by multiplying the number of barrels of that crude oil determined at the measurement point by the fiscal oil price per barrel.

[2023 No.1, s.16]

- (3) For the purpose of this section, the total value of chargeable oil for a company shall be the sum of the multiplications of the volume and fiscal oil price as established by the Commission at the measurement point.

[2023 No.1, s.16]

- (4) The whole of any additional chargeable tax for crude oil is payable by a company by virtue of this section for any accounting period shall be payable concurrently with the final instalment of the chargeable tax payable for that period..

[2023 No.1, s.16]

- (5) Where there is no fiscal oil price established for a crude oil stream, the Commission shall establish fiscal oil price for such stream and every fiscal oil price per barrel established shall bear a fair and reasonable relationship-

- (a) to the established fiscal oil price of Nigerian crude oil streams of comparable quality and specific gravity; or

- (b) where there are no such Nigerian crude oil streams of comparable quality and specific gravity, it shall bear a fair and reasonable relationship to the official selling prices at main international trading centres for crude oil of comparable quality and gravity, due regard being had in either case to freight differentials and other relevant factor.

[2023 No.1, s.16]

- (6) Where a particular company is chargeable oil is exported from Nigeria or sold locally by another company, that chargeable oil for the purpose of this section shall be deemed to be exported from Nigeria or sold by that particular company.

[2023 No.1, s.16]

PART V

Persons chargeable

24. Partnerships, etc.

- (1) Any person (other than a company) who engages in petroleum operations either on his own account or jointly with any other person or in partnership with any other person with a view to sharing the profits arising from those operations shall be guilty of an offence.
- (2) Where two or more companies are engaged in petroleum operations either in partnership, in a joint adventure or in concert under any scheme or arrangement, the Minister may make rules for the ascertainment of the tax to be charged and assessed upon each company so engaged.
- (3) Any such rules may modify the provisions of this Act in such manner as the Minister may think fit and may if necessary, provide for the apportionment of any profits, outgoings, expenses, liabilities, deductions, qualifying expenditure and the tax chargeable upon each company, or may provide for the computation of any tax as if the partnership, joint adventure, scheme or arrangement were carried on by one company and apportion that tax between the companies concerned or may accept some other basis of ascertaining the tax chargeable upon each of the companies which may be put forward by those companies and such rules may contain provisions which have regard to any circumstances whereby such operations are partly carried on for any companies by an operating company whose expenses are reimbursed by those companies.
- (4) Any such rules may be expressed to be of general application for the purposes of this section and Act or of particular application to a specified partnership, joint adventure, scheme or arrangement.
- (5) Any such rules may be amended or replaced from time to time with or without retrospective effect.
- (6) The effect of any such rules shall not impose a greater burden of tax upon any company so engaged in any partnership, joint adventure, scheme or arrangement than would have been imposed upon that company under this Act if all things enjoyed, done or suffered by such

partnership, joint adventure, scheme or arrangement had been enjoyed, done or suffered by that company in the proportion in which it enjoys, does or suffers those things under or by virtue of that partnership, joint adventure, scheme or arrangement.

25. Companies not resident in Nigeria

- (1) A company not resident in Nigeria which is or has been engaged in petroleum operations (hereinafter in this section referred to as a “non-resident company”) shall be assessable and chargeable to tax, either directly or in the name of its manager, or in the name of any other person who is resident in Nigeria, employed in the management of the petroleum operations carried on by such non-resident company, as such non-resident company would be assessed and charged if it were resident in Nigeria.
- (2) The person in whose name a non-resident company is assessable and chargeable to tax shall be answerable-
 - (a) for all matters required to be done by virtue of this Act for the assessment of the tax as might be required to be done by such non-resident company if it were resident in Nigeria; and
 - (b) for paying any tax assessed and charged in the name of such person by virtue of subsection (1) of this section.

26. Manager of companies, etc., to be answerable

The manager or any principal officer in Nigeria of every company which is or has been engaged in petroleum operations shall be answerable for doing all such acts as are required to be done by virtue of this Act for the assessment and charge to tax of such company and for payment of such tax.

27. Company wound up, etc.

- (1) Where a company is being wound up or where in respect of a company a receiver has been appointed by any Court, by the holders of any debentures issued by the company or otherwise, the company may be assessed and charged to tax in the name of the liquidator of the company, the receiver or any agent in Nigeria of the liquidator or receiver and may be so assessed and charged to tax for any accounting period whether before, during or after the date of the appointment of the liquidator or receiver.
- (2) Any such liquidator, receiver or agent shall be answerable for doing all such acts as are required to be done by virtue of this Act for the assessment and charge to tax of such company and for payment of such tax.
- (3) Such liquidator or receiver shall not distribute any assets of the company to the shareholders or debenture holders thereof unless he has made provision for the payment in full of any tax which may be found payable by the company or by such liquidator, receiver or agent on behalf of the company.

28.Avoidance by transfer

Where a company which is or was engaged in petroleum operations transfers a substantial part of its assets to any person without having paid any tax, assessed or chargeable upon the company, for any accounting period ending prior to such transfer and in the opinion of the Board one reason for such transfer by the company was to avoid payment of such tax then that tax as charged upon the company may be sued for and recovered from that person in a manner similar to a suit for any other tax under section 48 of this Act subject to any necessary modification of that section.

29.Indemnification of representative

Every person answerable under this Act for the payment of tax on behalf of a company may retain out of any money in or coming to his hands or within his *de facto* control on behalf of such company so much thereof as shall be sufficient to pay such tax, and shall be and is hereby indemnified against any person whatsoever for all payments made by him in accordance with the provisions of this Act.

PART VI

Accounts and particulars

30.Preparation and delivery of accounts and particulars

- (1) Every company engaged in petroleum operations shall for each accounting period of the company make up accounts of its profits or losses and prepare the following particulars for the purpose of determining Petroleum Profits Tax-
 - (a) A statement of accounts of its profits and losses;
 - (b) Computation of its actual adjusted profit or loss and actual assessable profits of that period;
 - (c) in connection with the Second Schedule to this Act. a schedule showing-
[Second Schedule.]
 - (i) the residues at the end of that period in respect of its assets;
 - (ii) all qualifying petroleum expenditure incurred by it in that period;
 - (iii) the values of any of its assets disposed of in that period; and
 - (iv) the allowances due to it under that Schedule for that period;
 - (d) a computation of its actual chargeable profits of that period;
 - (e) a statement of amounts repaid, refund, waived or released to it, referred to in section 10 (2) of this Act, during that period;

(f) duly completed self- assessment form attested to by the principal officer of the company;
and

(g) evidence of payment of the final instalment.

[2023 No.1, s.17]

(2) Every company engaged in petroleum operations shall with respect to any accounting period of the company, within five months after the expiration of that period or within five months after the expiration of that period, deliver to the Service a copy of its accounts bearing an auditor's certificate of that period, in accordance with the provisions of subsection (1) of this section, and copies of the particulars referred to in subsection (1) of this section relating to that period with the copy of the delivered company accounts and each copy of those particulars, shall contain a declaration signed by authorised officer of the company or by its liquidator, receiver or the agent of such liquidator or receiver, that the same is true and complete.

[2023 No.1, s.17]

(3) Notwithstanding the provisions of this section, every company which is yet to commence bulk sales or disposal of chargeable oil, shall file with the Service its audited accounts and returns-

(a) Within 18 months from the date of its incorporation, in the case of a newly incorporated company and returns-

(b) Within five months after any period ending on 31st December of the following year, in the case of any other company, provided that where there is an interval between 31st December of the preceding year and the date on which the company commences the bulk disposal of chargeable oil or condensate, the interval shall be deemed to form part of the preceding period.

(4) A company which fails to comply with the provisions of subsection (2) or (3) of this section is liable to pay as penalty for late filing-

(a) ₦10,000,000 on the first day the failure occurs and ₦2,000,000 for each and every subsequent day in which the failure continues;

(b) Other sum as may be prescribed by the Minister of Finance by order published in the Federal Government Gazette.

[2023 No.1, s.17]

31.Board may call for further information

The Board may give notice in writing to any company which is or has been engaged in petroleum operations when and as often as to the Board may seem necessary requiring it to furnish within such reasonable time as may be specified by such notice fuller or further information as to any of the matters either referred to in section 30 of this Act or as to any other matters which the Board may consider necessary for the purposes of this Act.

32. Power to call for returns, books, etc.

- (1) For the purpose of obtaining full information in respect of any company's petroleum operations the Board may give notice to such company requiring it within the time limited by such notice, which time shall not be less than 21 days from the date of service of such notice, to complete and deliver to the Board any information called for in such notice and in addition or alternatively requiring an authorised representative of such company or its liquidator, receiver or the agent of such liquidator or receiver, to attend before the Board or its authorised representative on such date or dates as may be specified in such notice and to produce for examination any books, documents, accounts and particulars which the Board may deem necessary.
- (2) If a company assessable to tax under the provisions of this Act fails or refuses to keep books or accounts which, in the opinion of the Board are adequate for the purpose of ascertaining the tax, the Board may by notice in writing require it to keep such records, books and accounts as the Board considers to be adequate in such form and in such language as the Board may in the said notice direct and, subject to the provisions of subsections (3) and (4) of this section, the company shall keep records, books and accounts as directed.
- (3) An appeal shall lie from any direction of the Board made under this section to a judge of the High Court.
- (4) On hearing such appeal the judge may confirm or modify such direction and any such decision shall be final.

33. Returns of estimated tax

- (1) Not later than two months after the commencement of each accounting period of any company engaged in petroleum operations, the company shall submit to the Board a return, the form of which the Board may prescribe, of its estimated tax for such accounting period.
- (2) If, at any time during any such accounting period the company having made a return as provided for in subsection (1) of this subsection is aware that the estimate in such return requires revision then it shall submit a further return containing its revised estimated tax for such period.

34. Extension of periods for making returns

Where it is shown by any company to the satisfaction of the Board that for some good reason the company is not able to comply with the provisions of section 30 of this Act within the time limited by that section or any notice given to it under section 31 or 32 of this Act, within the time limited by any such notice, the Board may grant in writing such extension of that time as the Board may consider necessary.

PART VII

Assessments

35. Board to make assessments

- (1) The Board shall proceed to assess every company with the tax for any accounting period of the company as soon as may be after the expiration of the time allowed to such company for the delivery of the accounts and particulars provided for in section 30 of this Act.
- (2) Where a company has delivered accounts and particulars for any accounting period of the company, the Board may-
 - (a) accept the same and make an assessment accordingly; or
 - (b) refuse to accept the same and proceed as provided in subsection (3) of this section upon any failure as therein mentioned and the like consequences shall ensue.
- (3) Where, for any accounting period of a company, the company has failed to deliver accounts and particulars provided for in section 30 of this Act within the time limited by that section or has failed to comply with any notice given to it under the provisions of section 31 or 32 of this Act within the time specified in such notice or within any extended time provided for in section 34 of this Act and the Board is of the opinion that such company is liable to pay tax, the Board may estimate the amount of the tax to be paid by such company for that accounting period and make an assessment accordingly, but such assessment shall not affect any liability otherwise incurred by such company by reason of its failure or neglect to deliver such accounts and particulars or to comply with such notices; and nothing in this subsection shall affect the right of the Board to make any additional assessment under the provisions of section 36 of this Act.

36. Additional assessments

- (1) If the Board discovers or is of the opinion at any time that, with respect to any company liable to tax, tax has not been charged and assessed upon the company or has been charged and assessed upon the company at a less amount than that which ought to have been charged and assessed for any accounting period of the company, the Board may within six years after the expiration of that accounting period and as often as may be necessary, assess such company with tax for that accounting period at such amount or additional amount as in the opinion of the Board ought to have been charged and assessed, and may make any consequential revision of the tax charged or to be charged for any subsequent accounting period of the company.
- (2) Where a revision under subsection (1) of this section results in a greater amount of tax to be charged than has been charged or would otherwise be charged an additional assessment or an assessment for any such subsequent accounting period shall be made accordingly, and the provisions of this Act as to notice of assessment, objection, appeal and other proceedings under this Act shall apply to any such assessment or additional assessment and to the tax charged thereunder.
- (3) For the purpose of computing under subsection (1) of this section the amount or the additional amount of tax for any accounting period of a company which ought to have been charged, all

relevant facts consistent with subsection (3) of section 43 of this Act shall be taken into account even though not known when any previous assessment or additional assessment on the company for that accounting period was being made or could have been made.

- (4) Notwithstanding the other provisions of this section, where any form of fraud, wilful default or neglect has been committed by or on behalf of any company in connection with any tax imposed under this Act, the Board may, at any time and as often as may be necessary, assess the company on such amount as may be necessary for the purpose of recovering any loss of tax attributable to the fraud, wilful default or neglect.

[1996 No. 30]

37. Making of assessments, etc.

- (1) Assessments of tax shall be made in such form and in such manner as the Board shall authorise and shall contain the names and addresses of the companies assessed to tax or of the persons in whose names any companies (with the names of such companies) have been assessed to tax, and in the case of each company for each of its accounting periods, the particular accounting period and the amount of the chargeable profits of and assessable tax and chargeable tax for that period.
- (2) When any assessment requires to be amended or revised, a form of amended or revised assessment shall be made in a manner similar to that in which the original of that assessment was made under subsection (1) of this section but showing the amended or revised amount of the chargeable profits, assessable tax and chargeable tax.
- (3) A copy of each assessment, and of each amended or revised assessment shall be filed in a list which shall constitute the Assessment List for the purpose of this Act.

38. Notices of assessment, etc.

- (1) The Board shall cause to be served personally on or sent by registered post to each person whose name appears on an assessment in the Assessment List, a notice of assessment stating its accounting period and the amount of its chargeable profits, assessable tax and chargeable tax charged and assessed upon the company, the place at which payment of the tax should be made, and informing such company of its rights under subsection (2) of this section.
- (2) If any person in whose name an assessment was made in accordance with the provisions of this Act disputes the assessment, that person may apply to the Board, by notice of objection in writing, to review and revise the assessment so made on him: and such application shall be made within 21 days from the date of service of the notice of such assessment and shall state the amount of chargeable profits of the company of the accounting period in respect of which the assessment is made and the amount of the assessable tax and the tax which such person claims should be stated on the notice of assessment.
- (3) The Board, upon being satisfied that owing to absence from Nigeria, sickness or other reasonable cause, the person in whose name the assessment was made was prevented from making the application within such period of 21 days, shall extend the period as may be reasonable in the circumstances.

- (4) After receipt of a notice of objection referred to in subsection (2) of this section the Board may within such time and at such place as the Board shall specify, require the person giving the notice of objection to furnish such particulars as the Board may deem necessary, and may by notice within such time and at such place as the Board shall specify, require any person to give evidence orally or in writing respecting any matters necessary for the ascertainment of the tax payable, and the Board may require such evidence if given orally to be given on oath or if given in writing to be given by affidavit.
- (5) In the event of any person assessed who has objected to an assessment made upon him agreeing with the Board as to the amount of tax liable to be assessed, the assessment shall be amended accordingly and notice of the tax payable shall be served upon such person.
- (6) If an applicant for revision under the provisions of subsection (2) of this section fails to agree with the Board the amount of the tax, the Board shall give such applicant notice of refusal to amend the assessment as desired by such applicant, and may revise the assessment to such amount as the Board may determine and give such applicant notice of the revised assessment and of the tax payable together with notice of refusal to amend the revised assessment and, wherever requisite, any reference in this Act to an assessment or to an additional assessment shall be treated as a reference to an assessment or to an additional assessment as revised under the provisions of this subsection.

39.Errors and defects in assessment and notice

- (1) No assessment, warrant or other proceeding purporting to be made in accordance with the provisions of this Act shall be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act or any Act amending the same, and if the company assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.
- (2) An assessment shall not be impeached or affected-
 - (a) by reason of a mistake therein as to-
 - (i) the name of a company liable or of a person in whose name a company is assessed;
or
 - (ii) the amount of the tax;
 - (b) by reason of any variance between the assessment and the notice thereof,

if in cases of assessment, the notice thereof be duly served on the company intended to be assessed or on the person in whose name the assessment was to be made on a company, and such notice contains, in substance and effect, the particulars on which the assessment is made.

40. Income tax computation

- (1) Notwithstanding anything to the contrary in any law, all income tax computation made under sections 28 and 31 of this Act shall be made in the currency in which the transaction was effected.

[1996 No. 30.]

- (2) Accordingly and notwithstanding anything to the contrary in any law, any assessment made under section 35 (1) of this Act shall also be made in the currency in which the computation giving rise to the assessment was made.

PART VIII

Appeals

41. Appeals to Appeal Commissioners

- (1) Any person (being a company or a person in whose name a company is assessed) being aggrieved by an assessment made upon him, who has failed to agree with the Board as referred to in section 38 (6) of this Act, may appeal against the assessment to the appropriate Appeal Commissioners upon giving notice in writing to the Board and to the secretary to such Commissioners within thirty days after the date of service upon him of notice of the refusal of the Board to amend the assessment as desired:

Provided that notwithstanding the lapse of such period of thirty days, by not more than a further period of sixty days, such person may appeal against the said assessment if he gives such Commissioners the particulars mentioned in paragraphs (a) to (c) inclusive of subsection (2) of this section and if he shows to their satisfaction that, owing to absence from Nigeria, sickness or other reasonable cause he was prevented from giving notice of appeal within such period of thirty days, and that there has been no unreasonable delay on his part; and upon the Commissioners being so satisfied, such person shall give such notice in writing to the Board and to such secretary within seven days thereof.

- (2) A notice of an appeal against an assessment, to be given under subsection (1) of this section, shall specify the following particulars-
 - (a) the official number of the assessment and the accounting period for which it was made;
 - (b) the amount of the tax charged by the assessment;
 - (c) the date upon which the appellant was served with notice of refusal of the Board to amend the assessment as desired;
 - (d) the precise grounds of his appeal against the assessment; and
 - (e) an address for service of any notices, precepts or other documents to be given, by the secretary to the appropriate Appeal Commissioners, to the appellant:

Provided that at any time the appellant may give notice to such secretary and to the Board, by delivering the same or by registered post, of a change of such address but any such notice shall not be valid until delivered or received.

- (3) For the purposes of this section, the appropriate Appeal Commissioners and their secretary to whom an appellant may give notice of appeal against an assessment under subsection (1) of this section shall be the body of Appeal Commissioners, if any, established, under the provisions of section 53 (1) of the Companies Income Tax Act, for the area in which is situated the office of the Federal Inland Revenue Service from which the notice of that assessment was issued.

[Cap. C21.]

- (4) For the purposes of this Act, the provisions of sections 54 and 55 of the Companies Income Tax Act shall apply in like manner as they apply to the provisions of the last mentioned Act.
- (5) The provisions of subsection (5), (7), (8) and (9) of section 42 of this Act shall apply to an appeal under this section with any necessary modifications.
- (6) All appeals shall be heard *in camera*.
- (7) The Minister may make rules prescribing the procedure to be followed with respect to precepts and other like documents to be issued on behalf of Appeal Commissioners, for the examination of witnesses and in the conduct of appeals before them.
- (8) Pending the making of any rules under subsection 7 of this section, any rules made or to be made (or any rules replacing any such rules) under section 55 (12) of the Companies Income Tax Act shall apply to any appeal or to any such procedure for the purposes of this section and Act with any necessary modifications.

42. Appeals to Federal High Court against assessments

- (1) Any person (being a company or a person in whose name a company is assessed) who, having appealed against an assessment made upon him to the appropriate Appeal Commissioners under the provisions of section 41 of this Act, is aggrieved by the decision of such Commissioners may appeal against the assessment and such decision to the Federal High Court upon giving notice in writing to the Board within thirty days after the date upon which such decision was given.
- (2) Notwithstanding the lapse of such period of thirty days by not more than a further period of sixty days, such person may appeal against the said assessment and decision if he shows to the satisfaction of the judge that, owing to absence from Nigeria, sickness or other reasonable cause he was prevented from giving notice of appeal within such period of thirty days, and that there has been no unreasonable delay on his part; and upon the judge being so satisfied such person shall give such notice in writing to the Board within seven days thereof.
- (3) Where no appropriate body of Appeal Commissioners has been appointed with jurisdiction to hear an appeal, against an assessment made upon any person, under the provisions referred to in subsection (3) of section 41 of this Act, such person being aggrieved by the assessment and

having failed to agree with the Board as referred to in subsection (6) of section 36, may appeal against the assessment to the Federal High Court upon giving notice in writing to the Board within thirty days after the date of service upon him of notice of the refusal of the Board to amend the assessment as desired and the provisions of subsection (2) of this section, so far as they are applicable, shall apply.

- (4) If the Board is dissatisfied with a decision of any Appeal Commissioners, it may appeal against the decision to the Federal High Court upon giving notice in writing to the other party to the appeal under section 41 of this Act upon which such decision was given, within thirty days after the date upon which such decision was given and the provisions of this section, so far as they are applicable, shall apply to any such appeal to the Federal High Court by the Board.
- (5) Every company appealing shall appoint an authorised representative who shall attend before the court in person on the day and at the time fixed for the hearing of its appeal, but if it be proved to the satisfaction of the judge that owing to absence from Nigeria, sickness or other reasonable cause any duly appointed representative is prevented from attending in person at the hearing of the company's appeal on the day and at the time fixed for that purpose, the judge may postpone the hearing of the appeal for such reasonable time as he thinks necessary for the attendance of the appellant's representative or he may admit the appeal to be made by any other agent, clerk or servant of the appellant, on its behalf or by way of written statement.
- (6) Twenty-one clear days' notice shall, unless rules made hereunder otherwise provide, be given to the Board of the date fixed for the hearing of the appeal.
- (7) The onus of proving that the assessment complained of is excessive shall be on the appellant.
- (8) The judge may confirm, reduce, increase or annul the assessment or make such order thereon as to him may seem fit.
- (9) Notice of the amount of tax payable under the assessment as determined by the judge shall be served by a duly authorised representative of the Board either personally on, or by registered post to, the appellant.
- (10) Notwithstanding anything contained in section 47 of this Act, if in any particular case, the judge from information given at the hearing of the appeal, is of the opinion that the tax may not be recovered, he may on application being made by or on behalf of the Board require the appellant to furnish within such time as may be specified security for payment of the tax and if such security is not given within the time specified the tax assessed shall become payable and recoverable forthwith.
- (11) All appeals shall be heard in camera, unless the judge shall, on the application of the appellant, otherwise direct.
- (12) The costs of the appeal shall be at the discretion of the judge hearing the appeal and shall be a sum fixed by the judge.

(13)

- (a) The Chief Judge of the Federal High Court may make rules providing for the method of tendering evidence before a judge on appeal, the conduct of such appeals and the procedure to be followed by a judge upon stating a case for the opinion of the Court of Appeal.
- (b) Pending the making of any rules under this subsection, the rules applicable in civil appeal cases from Magistrates Court to the High Court of Lagos State shall apply to any appeal or to any such procedure for the purposes of this section and Act with any necessary modifications.

(14) An appeal against the decision of the judge shall lie to the Court of Appeal-

- (a) at the instance of the appellant where the decision of the judge is to the effect that the correct assessment of tax is in the sum of ₦1,000 or upwards: and
- (b) at the instance of the Board where the decision of the judge is in respect of a matter in which the Board claimed that the correct assessment of tax was in the sum of ₦1,000 or upwards.

43. Assessment to be final and conclusive

- (1) Where no valid objection or appeal has been lodged within the time limited by section 38, 41 or 42 of this Act, as the case may be, against an assessment as regards the amount of the tax assessed thereby, or where the amount of the tax has been agreed to under subsection (5) of section 38 of this Act, or where the amount of the tax has been determined on objection or revision under subsection (6) of section 38 of this Act, or on appeal, the assessment as made, agreed to, revised or determined on appeal, as the case may be, shall be final and conclusive for all purposes of this Act as regards the amount of such tax, and if the full amount of the tax in respect of any such final and conclusive assessment is not paid within the appropriate period or periods prescribed in this Act, the provisions thereof relating to the recovery of tax, and to any penalty under section 42 of this Act, shall apply to the collection and recovery thereof subject only to the set-off of the amount of any tax repayable under any claim, made under any provisions of this Act, which has been agreed to by the Board or determined Oil any appeal against a refusal to admit any such claim.
- (2) Where all assessment has become final and conclusive, any tax overpaid shall be repaid.
- (3) Nothing in section 38 of this Act or in this Part shall prevent the Board from making any assessment or additional assessment to tax for any accounting period which does not involve re-opening any issue on the same facts which has been determined for that accounting period, under subsection (5) or (6) of section 38 of this Act by agreement or otherwise or on appeal.

PART IX

Collection, recovery and repayment of tax

44. Procedure in cases where objection or appeal is pending

Collection of tax shall in cases where notice of an objection or an appeal has been given remain in abeyance, any pending proceedings for any instalment thereof being stayed until such objection or appeal is determined but the Board may in any such case enforce payment of that portion of the tax (if any) which is not in dispute.

45. Time within which payment is to be made

- (1) Subject to the provisions of section 44 of this Act, tax for any accounting period shall be payable in equal monthly instalments together with a final instalment as provided in subsection (4) of this section.
- (2) The first monthly payment shall be due and payable not later than the third month of the accounting period and shall be in an amount equal to one-twelfth or, where the accounting period is less than a year, in an amount equal to equal monthly proportion, of the amount of tax estimated to be chargeable for such accounting period in accordance with section 33 (1) of this Act.
- (3) Each of the remainder of monthly payments to be made subsequent to the payment under subsection (2) of this section shall be due and payable not later than the last day of the month in question and shall be in an amount equal to the amount of tax estimated to be chargeable for such period by reference to the latest returns submitted by the company in accordance with section 33 (2) of this Act less so much as has already been paid for such accounting period divided by the number of such of the monthly payments remaining to be made in respect of such accounting period.
- (4) A final statement of tax shall be due and payable within 21 days after the service of the notice of assessment of tax for such accounting period, and shall be the amount of the tax assessment for that accounting period less so much thereof as has already been paid under subsection (2) and (3) of this section or is the subject of proceedings.
- (5) Any instalments on account of tax estimated to be chargeable shall be treated as tax charged and assessed for the purposes of sections 46 and 48 of this Act.
- (6) For the purposes of subsection (1) of this section, the conversion of the timing of payments of tax to provide for the making of monthly payments shall be given effect to as set out in the Third Schedule of this Act.

[Third Schedule.]

46. Penalty for non-payment of tax and enforcement of payment

- (1) If any instalment of tax due and payable pursuant to section 41 is not paid within the appropriate time limit prescribed in section 45 of this Act-

- (a) a sum equal to five per cent of the amount of the instalment of tax due and payable shall be added thereto, and the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of such sum;
 - (b) the Board shall cause to be served a demand note upon the company assessed or upon the person in whose name the company is assessed; and if payment is not made within one month from the date of the service of such demand note, the Board may proceed to enforce payment as hereinafter provided;
 - (c) a penalty imposed under this subsection shall not be deemed to be part of the tax paid for the purpose of any of the provisions of this Act, other than those relating to enforcement and collection of any tax.
- (2) Any company or person in whose name the company is assessed who without lawful justification or excuse, the proof whereof shall lie on the company, or such person assessed, fails to pay the tax within the period of one month prescribed in subsection (1) (b) of this section, shall be guilty of an offence.
- (3) The Board may, for any good cause shown, remit the whole or any part of the penalty due under subsection (1) of this section.

47. Collection of tax after determination of objection or appeal

Where payment of tax in whole or in part has been held over pending the result of a notice of objection or of appeal, the tax outstanding under the assessment as determined on such objection or appeal as the case may be shall be payable forthwith as to any part thereof in proceedings stayed pending such determination and as to the balance thereof within one month from the date of service on the company assessed, or on the person in whose name the company is assessed, of the notification of the tax payable, and if such balance is not paid within such period the provisions of section 42 of this Act shall apply.

48. Suit for tax by the Board

- (1) Tax may be sued for and recovered in a court of competent jurisdiction at the place at which payment should be made, by the Board in its official name with full costs of suit from the company assessed to such tax or from the person in whose name the company is assessed to such tax as a debt due to the Government of the Federation.
- (2) For the purposes of this section, a court of competent jurisdiction shall include a magistrate's court, which court is hereby invested with the necessary jurisdiction, if the amount claimed in any suit does not exceed the amount of the jurisdiction of the magistrate concerned with respect to personal suits.
- (3) In any suit under subsection (1) of this section the production of a certificate signed by any person duly authorised by the Board giving the name and address of the defendant and the amount of tax due by the defendant shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for the said amount.

49. Relief in respect of error or mistake

- (1) If any person who has paid tax for any accounting period alleges that any assessment, made upon him or in his name for that period, was excessive by reason of some error or mistake in the accounts, particulars or other written information supplied by him to the Board for the purpose of the assessment, such person may at any time, not later than six years after the end of the accounting period in respect of which the assessment was made, make an application in writing to the Board for relief.
- (2) On receiving any such application the Board shall inquire into the matter and subject to the provisions of this section shall by way of repayment of tax give such relief in respect of the error or mistake as appears to the Board to be reasonable and just.
- (3) No relief shall be given under this section in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where such accounts, particulars or information was in fact made or given on the basis or in accordance with the practice of the Board generally prevailing at the time when such accounts, particulars or information was made or given.
- (4) In determining any application under this section the Board shall have regard to all the relevant circumstances of the case, and in particular shall consider whether the granting of relief would result in the exclusion from charge to tax of any part of the chargeable profits of the applicant, and for this purpose the Board may take into consideration the liability of the applicant and assessments made upon him in respect of other years.
- (5) No appeal shall lie from a determination of the Board under this section, which determination shall be final and conclusive.

50. Repayment of tax

- (1) Save as is otherwise in this Act expressly provided, no claim for the repayment of any tax overpaid shall be allowed unless it is made in writing within six years next after the end of the accounting period to which it relates and if the Board disputes any such claim it shall give to the claimant notice of refusal to admit the claim and the provisions of sections 36 and 37 of this Act shall apply with any necessary modifications.
- (2) The Board shall give a certificate of the amount of any tax to be repaid under any of the provisions of this Act or under any order of a court of competent jurisdiction and upon the receipt of the certificate, the Accountant-General of the Federation shall cause repayment 10 be made in conformity therewith.

PART X

Offences and penalties

51. Penalty for offences

- (1) A person who fails to comply with the provisions of this Act or any Regulations made under this Act for which no other penalty is specifically provided, shall be liable to an administrative penalty of ₦10,000,000, and where the default continues beyond a period stipulated by this Act or Regulations, the person shall be liable to a further administrative penalty of ₦2,000,000 for each day the default continues or such other sum as may, by order, be prescribed by the Minister of Finance
- (2) Notwithstanding the provisions of this subsection (1) of this section, a person who is found guilty of an offence under this Act or Regulations made under this Act for which no other penalty is specifically provided, shall, upon conviction, be liable to fine of ₦2,000,000 or such other sum as may, by order, be prescribed by the Minister of Finance, or to imprisonment for six months or to both fine and imprisonment.
- (3) Any person who-
 - (a) fails to comply with the requirements of a notice served on him under this Act; or
 - (b) fails to comply with the provisions of section 30 of this Act;
 - (c) without sufficient cause fails to attend in answer to a notice or summons served on him under this Act or having attended fails to answer any question lawfully put to him; or
 - (d) fails to submit any return required to be submitted under section 30 or 33 of this Act, shall be liable to administrative penalty prescribed under subsection (1) of this section or upon conviction, be liable to penalty prescribed under subsection (2) of this section.
- (4) Any violation in respect of which a penalty is provided by section (1) of this section shall be deemed to occur in Nigeria.

[2023 No.1, s.18]

52. Penalty for making incorrect accounts, etc.

- (1) A person who without reasonable excuse-
 - (a) makes up or causes to be made up any incorrect accounts by omitting or understating any profits or overstating any losses of which he is required by this Act to make up accounts; or
 - (b) prepares or causes to be prepared any incorrect schedule or statement required to be prepared under section 30 of this Act by overstating any expenditure or overstating any royalties or other sums or by omitting or understating any amounts repaid, refunded, waived or released, or

- (c) gives or causes to be given any false or misleading information in relation to any matter or thing affecting his liability to tax,

is liable to an administrative penalty of the higher of the sum of ₦15,000,000 and 1% the amount of tax which has been undercharged in consequence of such incorrect account, schedule, statement or information or would have been undercharged if the account, schedule, statement or information has been accepted as correct and shall, in addition, be liable for the appropriate tax which would have been charged.

- (2) Notwithstanding the provisions of subsection (1) (c) of this section, a person who gives or causes to be given any false or misleading information in relation to any matter or thing affecting his liability to tax, commits an offence and upon conviction is liable to a fine of the higher of the sum of ₦15,000,000 and 1% of the amount of tax which has been undercharged in consequence of such incorrect account, schedule, statement or information, or would have been so undercharged if the account, schedule, statement or information had been accepted as correct and shall, in addition, be liable for the appropriate tax which would have been charged.
- (3) The Service may compound any offence under this Act by accepting a sum of money not exceeding the maximum fine specified for the offence and shall issue an official receipt for any money so received.

[2023 No.1, s.18]

53.False statements and returns

- (1) Any person who-

(a) for the purpose of obtaining any deduction, rebate, reduction or repayment in respect of tax for himself or for any other person, or who in any return, account, particulars or statement made or furnished with reference to tax, knowingly makes any false statement or false representation, or forges or fraudulently alters or uses, lends, or allows to be used by any other person any receipt or token evidencing payment of the tax under this Act; or

- (b) aids, abets, assists, counsels, incites or induces any other person-

(i) to make or deliver any false return or statement under this Act;

(ii) to keep or prepare any false accounts or particulars affecting tax; or

(iii) unlawfully to refuse or neglect to pay tax,

shall be liable to an administrative penalty of the higher of the sum of ₦15,000,000 and 1% of the amount of tax for which the person assessable is liable under this Act for the accounting period in respect of or during which the act or omission occurred and shall, in addition be liable for appropriate tax which would have been assessed and charged.

(1A) Notwithstanding the provision of subsection (1) of this section, any person who does any of the acts or makes the omission contained in subsection (1) of this section, commits

an offence, and on conviction, shall, in addition to the appropriate tax which would have been assessed and charged, be liable to a fine of the higher of the sum of ₦15,000,000 and 1% of the amount of tax for which the person assessable is liable to under this Act for the Accounting period in respect of or during which the offence was committed, or to imprisonment for six months or to both the fine and imprisonment.

[2023 No.1, s.19]

54. Penalty for failure to withhold tax

- (1) Any person who, being required to deduct withholding tax under this Act, fails to deduct or, having deducted, fails to remit to the Federal Inland Revenue Service within 30 days from the date the amount was deducted or the time the duty to deduct arose shall be guilty of an offence and liable on conviction to a fine of 200% of tax not withheld or not remitted plus interest at the prevailing commercial rate.

[1996 No.31]

- (2) The relevant tax authority shall cause to be served on or sent by registered post to any person who fails to withhold or, if withheld, fails to remit the amount required to be withheld, a notice stating the amount of tax not withheld or not remitted and the place at which payment should be made, and the provisions of this Act relating to tax assessment and recovery shall apply.

55.[Deleted by 2023 No. 1, s.20]

56. Deduction of tax at source

- (1) Income tax assessable on any company, partnership or person (whether or not resident in Nigeria) who provides petroleum operation services and related activities to a company carrying on petroleum operations in Nigeria, whether or not an assessment has been made, shall be recoverable from any payment (whether or not made in Nigeria) made by any person to such company, partnership or person.
- (2) For the purpose of this section, the rate at which tax is to be deducted and the nature of the activities and services for which a company making payment is to deduct tax at the date when the payment is made or credited, whichever first occurs, shall be as specified in Government Notice No. 450, Official *Gazette* No. 34 Vol. 72 of 27 June 1985 or any Government Notice replacing it.
- (3) A company which has deducted tax under this section shall forward to the Board the amount of tax deducted and shall also forward a statement showing the name and address of the person who suffered the tax deduction and the nature of activities or services in respect of which any payment was made.
- (4) Income tax recovered under the provisions of this section by deduction from payments made to a company, partnership or person shall be set-off for the purposes of collection against tax charged on such company, partnership or persons by an assessment, provided that the total of such deduction does not exceed the amount of the assessment.

57. Tax to be payable notwithstanding any proceedings for penalties

The institution of proceedings for or the imposition of a penalty, fine or term of imprisonment under this Act shall not relieve any person from liability to payment of any tax for which he is or may become liable.

58. Prosecution to be with the sanction of the Board

No prosecution in respect of an offence under sections 5, 52, 53 or 55 of this Act may be commenced, except at the instance of or with the sanction of the Board.

59. Saving for criminal proceedings

The provisions of this Act shall not affect any criminal proceedings under any other Act or law.

PART XI

Miscellaneous

60. [Deleted by 2019 No. 1, s. 24]

61. Double taxation arrangements with other territories

- (1) If the Minister by order declares that arrangements specified in the order have been made with the Government of any territory outside Nigeria with a view to affording relief from double taxation in relation to tax imposed under the provisions of this Act and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect notwithstanding anything in any enactment.
- (2) The Minister may make rules for carrying out the provisions of any arrangements having effect under this section.
- (3) An order made under the provisions of subsection (1) of this section may include provisions for relief from tax for accounting periods commencing or terminating before the making of the order and provisions as to income (which expression includes profits) which is not itself liable to double taxation.
- (4) Where, before the publication of this Act in the Federal *Gazette* upon enactment, any order has been made under the provisions of section 33 of the Income Tax Act and the arrangements specified in that order, with any modifications, are expressed to apply to a tax in a territory outside Nigeria and to income tax in Nigeria and to any other taxes of a substantially similar character either imposed in that territory or Nigeria or imposed by either contracting party to any such arrangements after those arrangements came into force and-

[Cap. 85 of the 1958 Laws of Nigeria.]

- (a) such order was made before the 1st day of January 1958, then, for the purposes of this Act,

that order shall be deemed to have been made under this section on that day and those arrangements shall have effect, in Nigeria, as respects tax for any accounting period: or

- (b) such order was made on a day after the year 1957, then for the purposes of this Act, that order shall be deemed to have been made under this section on that day and the arrangements specified therein shall have effect in Nigeria as respects tax for any accounting period beginning on or after the date when those arrangements come into force and for the unexpired portion of any accounting period current at that date,

and where any arrangements, to which this subsection applies, contain a provision for exchange of information with the Commissioner of Income Tax or the Commissioner as defined in section 2 of the Income Tax Act then the order with respect to those arrangements as deemed to have been made under this section, shall be deemed to provide for such exchange with the chairman of the Board as respects tax.

[Cap. 85 of the 1958 Laws of Nigeria.]

- (5) The Minister may by order replace or vary any order deemed to have been made under this section for the purposes of this Act, without otherwise affecting such last mentioned order for the purpose of any other Act.

62. Method of calculating relief to be allowed for double taxation

- (1) The provisions of this section shall have effect where, under arrangements having effect under section 61 of this Act, foreign tax payable in respect of any income in the territory with the Government of which the arrangements are made is to be allowed as a credit against tax payable in respect of that income in Nigeria: and in this section the expression “**foreign tax**” means any tax payable in that territory which under the arrangements, is to be so allowed, and “**income**” means that part of the profits of any accounting period which is liable to both tax and foreign tax, before the deduction of any tax, foreign tax, credit therefor or relief granted under subsection (6) of this section.
- (2) The amount of the credit admissible to any company under the terms of any such arrangements shall be set off against the tax chargeable upon that company in respect of the income and where that tax has been paid the amount of the credit may be repaid to that company or carried forward against the tax chargeable upon that company of any subsequent accounting period.
- (3) The credit for an accounting period shall not exceed whichever is the less of the following amounts, that is to say-
 - (a) the amount of the foreign tax payable on the income: or
 - (b) the amount of the difference between the tax chargeable under this Act (before allowance of credit under any arrangements having effect under section 61 of this Act) and the tax which would be so chargeable if the income were excluded in computing profits.
- (4) Without prejudice to the provisions of subsection (3) of this section, the total credit to be allowed to a company for any accounting period for foreign tax under all arrangements having

effect under section 61 of this Act shall not exceed the total tax which would be ultimately borne by that company, for that accounting period, if no such credit had been allowed.

- (5) Where the income includes a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering if any, and if so what, credit is to be given against tax in respect of the dividend, the amount of the income shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of the credit.
- (6) Where the amount of the foreign tax attributable to the income exceeds the credit therefor computed under subsection (3) of this section, then the amount of that income, to be included in computing profits for any purpose of this Act other than that of subsection (3) of this section, shall be taken to be the amount of that income increased by the amount of the credit therefor after deduction of the foreign tax.
- (7) Where-
 - (a) the arrangements provide, in relation to dividends of some classes, but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering if any, and if so what, credit is to be given against tax in respect of the dividends; and
 - (b) a dividend is paid which is not of a class in relation to which the arrangements so provide, then, if the dividend is paid to a company which controls, directly or indirectly, not less than half of the voting power in the company paying the dividends, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.
- (8) Any claim for an allowance by way of credit shall be made not later than three years after the end of the accounting period, and in the event of any dispute as to the amount allowable the Board shall give to the claimant notice of refusal to admit the claim which shall be subject to appeal in like manner as an assessment.
- (9) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in Nigeria or elsewhere, nothing in this Act limiting the time for the making of assessments or claims for repayment of tax shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than three years from the time when all such assessments, adjustments and other determinations have been made, whether in Nigeria or elsewhere, as are material in determining whether any, and if so what, credit falls to be given.
- (10) Where a company is not resident in Nigeria throughout an accounting period no credit shall be admitted in respect of any income included in the profits of that company of that period.

63. Power to amend the First Schedule

At any time after the enactment of this Act, the Minister may by order delete any of the powers or duties specified in the First Schedule or include therein additional powers or duties and may do so by amendment of such Schedule or by substituting a new Schedule therefor.

FIRST SCHEDULE

[Section 3 (e), 4 and 62.]

Powers or duties to be performed or exercised by the Board alone

The powers or duties specified in or imported into the following sections of this Act (other than such part of any powers or duties as consist of a power or duty to make enquiries or other incidental or preparatory powers or duties of a like nature) shall only be performed or exercised by the Board, who shall have no power to authorise any other person to perform the same, namely, powers or duties in sections 3 (b), (d) and (e), 6 (2), 10 (1) (k), 13 (3) (c), 15, 31 (2), 33 (1), 37 (1), 49, 52, 53 and 58 of this Act.

SECOND SCHEDULE

[Sections 10, 20 and 30.]

Capital allowances

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Interpretation.
2. Provisions relating to qualifying petroleum expenditure.
3. Owner and meaning of relevant interest.
4. Sale of buildings, etc.
5. Petroleum investment allowance
6. Annual allowances.
7. Asset to be in use at end of accounting period.
8. Balancing allowances.

9. Balancing charges.
10. Residue.
11. Meaning of “disposed of”.
12. Value of an asset.
13. Apportionment.
14. Part of an asset.
15. Extension of meaning of “in use”.
16. Exclusion of certain expenditure.
17. Asset used or expenditure incurred partly for the purpose of petroleum operations.
18. Disposal without change of ownership.

1. Interpretation

(1) For the purposes of this Schedule, unless the context otherwise requires-

“**concession**” includes an oil exploration licence, an oil prospecting licence, an oil mining lease, any right, title or interest in or to petroleum oil in the ground and any option of acquiring any such right, title or interest;

“**lease**” includes an agreement for a lease where the term to be covered by the lease has begun, any tenancy and any agreement for the letting or hiring out of an asset, but does not include a mortgage, and all cognate expressions including “**leasehold interest**” shall be construed accordingly; and-

- (a) where, with the consent of the lessor, a lessee of any asset remains in possession thereof after the termination of the lease without a new lease being granted to him, that lease shall be deemed for the purposes of this Schedule to continue so long as he remains in possession as aforesaid; and
- (b) where, on the termination of a lease of any asset, a new lease of that asset is granted to the lessee, the provisions of this Schedule shall have effect as if the second lease were a continuation of the first lease;

[1973 No. 15.]

“**qualifying expenditure**” means, subject to the express provisions of this Schedule, expenditure incurred in an accounting period which is-

- (a) capital expenditure (hereinafter called “qualifying plant expenditure”) incurred on plant, machinery or fixtures;

- (b) capital expenditure (hereinafter called “qualifying pipeline and storage expenditure”) incurred on pipelines and storage tanks;
- (c) capital expenditure (hereinafter called “qualifying building expenditure”), other than expenditure which is included in paragraphs (a), (b) or (d) of this interpretation, incurred on the construction of buildings, structures or works of a permanent nature; or
- (d) capital expenditure (hereinafter called “qualifying drilling expenditure”) other than expenditure which is included in paragraph (a) or (b) of this interpretation, incurred in connection with, or with petroleum operations in view of-
 - (i) the acquisition of, or of rights in or over, petroleum deposits;
 - (ii) searching for or discovering and testing petroleum deposits, or winning access thereto; or
 - (iii) the construction of any works or buildings which are likely to be of little or no value when the petroleum operations for which they were constructed cease to be carried on:

Provided that, for the purposes of this definition qualifying expenditure shall not include any sum which may be deducted under the provisions of section 10 of this Act.

- (2) For the purposes of this interpretation of qualifying expenditure, where expenditure is incurred by a company before its first accounting period and such expenditure would have fallen to be treated as qualifying expenditure (ascertained without the qualification contained in the foregoing proviso) if it had been incurred by the company on the first day of its first accounting period, and-
 - (a) that expenditure is incurred in respect of an asset owned by the company then such expenditure shall be deemed to be qualifying expenditure incurred by it on that day; or
 - (b) that expenditure is incurred in respect of an asset which has been disposed of by the company before the beginning of its first accounting period then any loss suffered by the company on the disposal of such asset shall be deemed to be qualifying petroleum expenditure incurred by the company on that day and be deemed to have brought into existence an asset owned by the company in use for the purposes of petroleum operations carried on by the company, and any profit realised by the company on such disposal shall be treated as income of the company of its first accounting period for the purposes of subsection (1) (a) of section 9 of this Act.

2. Provisions relating to qualifying petroleum expenditure

- (1) For the purposes of this Schedule where-
 - (a) expenditure has been incurred before its first accounting period and such expenditure would have been treated as such qualifying petroleum expenditure (ascertained without the qualification contained in the proviso in the interpretation of qualifying expenditure) if it

had been incurred in that first accounting period; and

- (b) such expenditure has not brought into existence an asset,

then such expenditure (ascertained in the case of sub-paragraph (1) (a) of this paragraph without such qualification) shall be deemed to have brought into existence an asset owned by the company incurring the expenditure and in use for the purposes of such petroleum operations.

- (2) For the purposes of this Schedule, an asset in respect of which qualifying drilling expenditure has been incurred by any company for the purposes of petroleum operations carried on by it during any accounting period of the company, and which has not been disposed of, shall be deemed not to cease to be used for the purposes of such operations so long as such company continues to carry on such operations.
- (3) So much of any qualifying petroleum expenditure incurred on the acquisition of rights in or over petroleum deposits and on the purchase of information relating to the existence and extent of such deposits as exceeds the total of the original cost of acquisition of such rights and of the cost of searching for, discovering and testing such deposits prior to the purchase of such information shall be left out of account for the purposes of this Schedule:

Provided that where the company which originally incurred such costs was a company which carried on a trade or business consisting, as to the whole or part thereof, in the acquisition of such rights or information with a view to the assignment or sale thereof, the price paid on such assignment or sale shall be substituted for the aforementioned costs.

3. Owner and meaning of relevant interest

- (1) For the purposes of this Schedule, where an asset consists of a building, structure or works, the owner thereof shall be taken to be the owner of the relevant interest in such building, structure or works.
- (2) Subject to the I provisions of this paragraph, in this Schedule, the expression “**the relevant interest**” means, in relation to any expenditure incurred on the construction of a building, structure or works, the interest in such building, structure or works to which the company which incurred such expenditure was entitled when it incurred the expenditure.
- (3) Where, when a company incurs qualifying building expenditure or qualifying drilling expenditure on the construction of a building, structure or works, the company is entitled to two or more interests therein, and one of those interests is an interest which is reversionary on all the others, that interest shall be the relevant interest for the purposes of this Schedule.

4. Sale of buildings, etc.

Where capital expenditure has been incurred on the construction of a building, structure or works and thereafter the relevant interest therein is sold, the company which buys that interest shall be deemed, for all the purposes of this Schedule except the granting of petroleum investment allowance, to have incurred, on the date when the purchase price became payable, capital expenditure on the construction thereof equal to the price paid by it for such interest or to the

original cost of construction, whichever is the less:

Provided that-

- (a) where such relevant interest is sold before the building, structure or works has been used, the foregoing provisions of this paragraph shall have effect with respect to such sale with the omission of the words “except the granting of petroleum investment allowance” and the original cost of construction shall be taken to be the amount of the purchase price on such sale;
- (b) where any such relevant interest is sold more than once before the building, structure or works is used, the provisions of sub paragraph (a) shall have effect only in relation to the last of those sales.

5. Petroleum investment allowance

- (1) For the purposes of this Act and subject to the provisions of this Schedule, where a company has incurred any qualifying capital expenditure wholly, exclusively and necessarily for the purposes of petroleum operations carried out by it, there shall be due to that company, for the accounting period in which that asset was first used or for the purposes of such operations, an allowance (in this Schedule called “Petroleum Investment Allowance”) at the appropriate rate per cent, set forth in Table 1 to this Schedule, of such expenditure.
- (2) For the purpose of this Act, the Petroleum Investment Allowance shall be added to the annual allowance computed under paragraph 6 of this Schedule and shall be subject to the same rules under this Act.

6. Annual allowance

- (1) Subject to the provisions of this Schedule, where in any accounting period, a company owning any assets has incurred in respect thereof qualifying expenditure wholly, necessarily and exclusively for the purposes of petroleum operations carried on by it, there shall be due to that company as from the accounting period in which such expenditure was incurred, an allowance (in this Act referred to as “an annual allowance”) at the appropriate rate *per centum* specified in Table II of this Schedule.
- (2) Notwithstanding the provisions of sub-paragraph (1) of this paragraph, there shall be retained in the books, in respect of each asset 1% of the initial cost asset which may only be written off in accordance with sub-paragraph (3) of this paragraph.
- (3) Any asset or part thereof in respect of which capital allowances have been granted may only be disposed of on the authority of a Certificate of Disposal issued by the Minister or any person authorised by him.
- (4) Any unrecovered capitalised expenditure prior to 1 April 1977 shall be deemed to have been capitalised with effect from 1 April 1977 and shall, as provided for in sub paragraph (1) of this paragraph, be amortised in five equal instalments and shall be subject to the provisions of sub-paragraphs (2) and (3) of this paragraph.

7. Asset to be in use at end of account period

An initial or an annual allowance in respect of qualifying expenditure incurred in respect of any asset shall only be due to a company for any accounting period if at the end of such accounting period it was the owner of that asset and the asset was in use for the purposes of the petroleum operations carried on by it.

8. Balancing allowances

Subject to the provisions of this Schedule, where in any accounting period of a company, the company owning any asset in respect of which it has incurred qualifying expenditure wholly and exclusively for the purposes of petroleum operations carried on by it, disposes of that asset an allowance (hereinafter called “a balancing allowance”) shall be due to that company for that accounting period of the excess of the residue of that expenditure, at the date such asset is disposed of, over the value of that asset at that date:

Provided that a balancing allowance shall only be due in respect of such asset if immediately prior to its disposal it was in use by such company for the purposes of the petroleum operations for which such qualifying expenditure was incurred.

9. Balancing charges

Subject to the provisions of this Schedule, where in any accounting period of a company, the company owning any asset in respect of which it has incurred qualifying expenditure wholly and exclusively for the purposes of petroleum operations carried on by it, disposes of that asset, the excess (hereinafter called “a balancing charge”) of the value of that asset, at the date of its disposal, over the residue of that expenditure at that date shall, for the purposes of subsection (1)

(a) of section 9 of this Act, be treated as income of the company of that accounting period:

Provided that a balancing charge in respect of such asset shall only be so treated if immediately prior to the disposal of that asset it was in use by such company for the purposes of the petroleum operations for which such qualifying expenditure was incurred and shall not exceed the total of any allowances due under the provisions of this Schedule, in respect of such asset.

10. Residue

The residue of qualifying expenditure, in respect of any asset, at any date, shall be taken to be the total qualifying expenditure incurred on or before that date, by the owner thereof at that date, in respect of that asset, less the total of any annual allowances due to such owner, in respect of that asset, before that date.

11. Meaning of “disposed of”

Subject to any express provision to the contrary, for the purposes of this Schedule-

- (a) a building, structure or works of a permanent nature is disposed of if any of the following events occur-

- (i) the relevant interest is sold; or
 - (ii) that interest, being an interest depending on the duration of a concession, comes to an end on the coming to an end of that concession; or
 - (iii) that interest, being a leasehold interest, comes to an end otherwise than on the company entitled thereto acquiring the interest which is reversionary thereon; or
 - (iv) the building, structure or works of a permanent nature are demolished or destroyed or, without being demolished or destroyed, cease altogether to be used for the purposes of petroleum operations carried on by the owner thereof;
- (b) plant, machinery or fixtures. are disposed of if they are sold, discarded or cease altogether to be used for the purposes of petroleum operations carried on by the owner thereof;
- (c) assets in respect of which qualifying drilling expenditure is incurred are disposed of if they are sold or if they cease to be used for the purposes of the petroleum operations of the company incurring the expenditure either on such company ceasing to carry on all such operations or on such company receiving insurance or compensation monies therefor.

12. Value of an asset

- (1) The value of an asset at the date of its disposal shall be the net proceeds of the sale thereof or of the relevant interest therein, or, if it was disposed of without being sold, the amount which, in the opinion of the Board, such asset or the relevant interest therein, as the case may be, would have fetched if sold in the open market at that date, less the amount of any expenses which the owner might reasonably be expected to incur if the asset were so sold.
- (2) For the purpose of this paragraph, if an asset is disposed of in such circumstances that insurance or compensation monies are received by the owner thereof, the asset or the relevant interest therein, as the case may be, shall be treated as having been sold and as though the net proceeds of the insurance or compensation monies were the net proceeds of the sale thereof.

13. Apportionment

- (1) Any reference in this Schedule to the disposal, sale or purchase of any asset includes a reference to the disposal, sale or purchase of that asset, as the case may be, together with any other asset, whether or not qualifying expenditure has been incurred on such last-mentioned asset, and, where an asset is disposed of, sold, or purchased together with another asset, so much of the value of the assets as, on a just apportionment, is properly attributable to the first mentioned asset shall, for the purposes of this Schedule, be deemed to be the value of, or the price paid for, that asset, as the case may be. For the purposes of this sub-paragraph, all the assets which are purchased or disposed of in pursuance of one bargain shall be deemed to be purchased or disposed of together, notwithstanding that separate prices are or purport to be agreed for each of those assets or that there are or purport to be separate purchases or disposals of those assets.
- (2) The provisions of sub-paragraph (1) of this paragraph shall apply, with any necessary modifications, to the sale or purchase of the relevant interest in any asset together with any

other asset or relevant interest in any other asset.

14. Part of an asset

Any reference in this Schedule to any asset shall be construed whenever necessary as including a reference to a part of any asset (including an undivided part of that asset in the case of joint interests therein) and when so construed any necessary apportionment shall be made as may, in the opinion of the Board, be just and reasonable.

15. Extension of meaning of “in use”

- (1) For the purposes of this Schedule, an asset shall be deemed to be in use during a period of temporary disuse.
- (2) For the purposes of paragraphs 5, 6 and 7 of this Schedule-
 - (a) an asset in respect of which qualifying expenditure has been incurred by the owner thereof for the purposes of petroleum operations carried on by him shall be deemed to be in use for the purposes of such operations, between the dates hereinafter mentioned, where the Board is of the opinion that the first use to which the asset will be put by that owner incurring such expenditure will be for the purposes of such operations;
 - (b) the said dates shall be taken to be the date on which such expenditure was incurred and the date on which the asset is in fact first put to use:

Provided that where any allowances have been given in consequence of this subparagraph (2) of this paragraph and the first use to which such asset is put is not for the purposes of such operations, all such additional assessments shall be made as may be necessary to counteract the benefit obtained from the giving of any such allowances.

16. Exclusion of certain expenditure

- (1) Subject to the express provisions of this Schedule, where any company has incurred expenditure which is allowed to be deducted under any provision (other than a provision of this Schedule) of this Act, such expenditure shall not be or be treated as qualifying expenditure.
- (2) Where any company has incurred expenditure upon any ocean-going oil tanker plying between Nigeria and any other territory that expenditure shall not be treated as qualifying expenditure.

17. Asset used or expenditure incurred partly for the purpose of petroleum operations

- (1) The following provisions of this paragraph shall apply where, either or both of the following conditions apply with respect to any asset-
 - (a) the owner of the asset has incurred in respect thereof qualifying expenditure partly for the purposes of petroleum operations carried on by him and partly for other purposes;
 - (b) the asset in respect of which qualifying expenditure has been incurred by the owner thereof

is used partly for the purposes of petroleum operations carried on by such owner and partly for other purposes.

- (2) Any allowances which would be due or any balancing charges which would be treated as income if both such expenditure were incurred wholly and exclusively for the purposes of such petroleum operations and such asset were used wholly and exclusively for the purposes of such operations shall be computed in accordance with the provisions of this Schedule.
- (3) So much of the allowances and charges computed in accordance with the provisions of subparagraph (2) of this paragraph shall be due or shall be so treated, as the case may be, as in the opinion of the Board is just and reasonable having regard to all the circumstances and to the provisions of this Schedule.

18. Disposal without change of ownership

Where an asset in respect of which qualifying expenditure has been incurred by the owner thereof has been disposed of in such circumstances that such owner remains the owner thereof, then, for the purposes of determining whether and, if so, in what amount, any annual or balancing allowance or balancing charge shall be made to or on such owner in respect of his use of that asset after the date of such disposal-

- (a) qualifying expenditure incurred by such owner in respect of such asset prior to the date of such disposal shall be left out of account; but
- (b) such owner shall be deemed to have bought such asset immediately after such disposal for a price equal to the residue of such qualifying expenditure at the date of such disposal, increased by the amount of any balancing charge or decreased by the amount of any balancing allowance made as a result of such disposal.

TABLE I

[Paragraph 5.]

<i>Qualifying expenditure in respect of</i>	<i>Rate per centum</i>
On-shore operations	5
Operations in territorial waters and continental shelf areas up to and including 100 metres of water depth.	10
Operations in territorial waters and continental shelf areas in water depth between 100 and 200 metre.....	15
Operations in territorial waters and continental shelf areas beyond 200 metres of water depth.	20

TABLE II

[Paragraph 6.]

<i>Annual allowance centum</i>	<i>Rate per</i>
First year	20
2nd year.....	20
3rd year	20
4th year.....	20
5th year.....	19
6th year and after	19

THIRD SCHEDULE

[Section 45.]

Time for payments

1. In respect of the company's petroleum operations for the 1971 accounting period, 50% of the tax shall continue to be payable in instalments on the basis set out in section 45; the remaining 50% of the tax shall be payable in six consecutive monthly instalments on the basis set out in section 45 (6) (b), the first of such instalments being due not later than 30 September 1971.
2. In respect of the company's petroleum operations for the 1972 accounting period, 25% of the tax shall continue to be payable in instalments on the basis set out in section 42; the remaining 75% of the tax shall be payable in monthly instalments.
3. In respect of the company's petroleum operations for the 1973 accounting period and of each subsequent accounting period, the tax due for each such year shall be payable in monthly instalments.

FOURTH SCHEDULE

[Section 9 (1) (c).]

1. Interpretation of Fourth Schedule

(1) For the purposes of this Schedule, unless the context otherwise requires-

“**contract capacity**” means the maximum quantity of natural gas expressed in MMcf to which a customer of a company is entitled in the accounting period under an individual gas sales contract between the company and such customer;

“**gas take**” means the actual quantity of natural gas expressed in MMcf actually taken or paid for by a customer in the accounting period under an individual gas sales contract between the company and a customer of the company.

2. Ascertainment of G-Factor

- (1) The value of all chargeable natural gas in the accounting period shall be the sum of gross proceeds under individual gas sales contracts in the accounting period less the G-Factor allowance as applicable to any such individual gas sales contracts at the appropriate rate per cent of such proceeds under any such individual gas sales contracts as specified in the Table to this Schedule.
- (2) G-Factor *per centum* in respect of factors in between the figures mentioned in the Table to this Schedule shall be calculated on pro-rata basis.

3. Power of review

The Government of the Federation may from time to time review the G-Factor allowance specified in the Table to this Schedule.

TABLE

<i>Load factor</i>	<i>G-Factor per centum</i>
50	16.9
60	15.5
70	14.3
80	13.6

CHAPTER S8

STAMP DUTIES ACT

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SCHEDULES

CHAPTER S8

STAMP DUTIES ACT

An Act to provide for the levying of stamp duties on certain matters.

[5 of 1939, 28 of 1941, 17 of 1942, 26 of 1946, 38 of 1950, 2 of 1953, Resolution and Order 2 of 1948, 1 of 1951, Resolution 6 of 1951, Order 47 of 1951, L.N. 64 of 1954, 131 of 1954, 47 of 1955, 90 of 1956.]

[Commencement]

[1st April, 1939]

1. Short title

This Act may be cited as the Stamp Duties Act.

[54 & 55. Vict. C. 38 (s.27) L.N. 131 of J 954.]

2. Interpretation

In this Act unless the context so requires-

“**Accountant-General**” means the Accountant-General of the Federation;

“**commissioner**” means a commissioner of stamp duties appointed as hereinafter provided;

“**die**” includes any plate, type, tool, or implement whatever used under the direction of the Minister of Finance or his counterpart in the State, as the case may be, for expressing or denoting any duty, or rate of duty, or the fact that any duty, or rate of duty or penalty has been paid, or that an instrument is duly stamped, or is not chargeable with any duty, or for denoting any fee, and also any part of any such plate, type, tool or implement;

“**duty**” means any stamp duty for the time being chargeable under this or any other Act and also includes any fee chargeable hereunder;

“**executed**” and “**execution**” with reference to instruments not under seal, mean signed and signature;

“**Government**” includes the Government of the Federation or of a State and any department thereof, local government council, and an officer acting in his official capacity on behalf of the Government of the Federation or of a State or any department thereof, or of a local government area, and not on behalf of a private person;

“**instrument**” includes every written document and electronic documents;

[2019 No. 1, s. 52]

“**marketable security**” includes a security of such a description as to be capable of being sold in any stock market;

“**material**” includes every sort of material upon which words or figures can be expressed;

“**money**” includes all sums expressed in naira or in any foreign currency;

“**stamp**” means an impressed pattern or mark by means of an engraved or inked die, an adhesive stamp, an electronic stamp or an electronic acknowledgement for denoting any duty or fee, provided that the Service shall utilise adhesive stamp produced by the Nigerian Postal Service pursuant to its enabling Act;

[2020 No. 1, s. 46]

“**stamped**” with reference to instruments and material, applies to instruments and material impressed with stamps by means of an engraved or inked block die, adhesive stamps affixed thereto as well as to instruments and material digitally tagged with electronic stamp or notional stamp on an electronic receipt;

[2019 No. 1, s. 52]

“**stock**” includes any share in any stocks transferable at the Central Bank of Nigeria, promissory notes, and any share in the stocks or funds of any foreign State or Government, or in the capital stock or funded debt of any local authority, corporation, company or society in Nigeria or of any foreign corporation, company, or society;

“**write**”, "written" and "writing" include every mode in which words or figures can be expressed upon material.

PART I

Provisions applicable to instruments generally

Charge of duty upon instruments

3. Charge of duties in Schedule

- (1) From and after the commencement of this Act, the duties to be charged upon the several instruments specified in the Schedule to this Act shall be the several duties set out in the said Schedule, which duties shall be in substitution for the duties heretofore chargeable under the enactments repealed by this Act and shall be subject to the exemptions contained in this Act and in any other Act for the time being in force.

[L.N. 49 of 1961. L.N. 131 of 1954. L.N. 112 of 1964. Schedule.]

- (2) The duties charged under this Act shall be accounted for in a manner to be prescribed in proper case by the Minister after consultation with the Governors of the States.
- (3) The functions under this Act shall be respectively confined to matters in respect of which the Government of the Federation and the Government of such State shall be competent to make laws:

Provided that nothing herein shall be interpreted as preventing the appointment by the President and by a Governor of the same person to be both a Federal and a State commissioner under section 6 of this Act.

4. Stamping and collection of duties on corporate instruments

- (1) The Federal Inland Revenue Service shall be the only competent authority to impose, charge and collect duties upon instruments specified in the Schedule to this Act if such instrument relates to matters executed between a company and an individual, group or body of individuals.

[2019 No. 1, s. 53]

- (2) The relevant tax authority in a State shall collect duties in respect of instruments executed between persons or individuals at such rates to be imposed or charged as may be agreed with the Federal Government.

[2019 No. 1, s. 53]

- (3) In this section, “**company**” includes banks and other financial institutions.

5. Manner of denoting duty

- (1) All duties for the time being chargeable under the provisions of this Act upon any instruments shall be paid and denoted according to the provisions in this Act, and, except where express provision is made to the contrary in this Act or by the regulations made thereunder are to be denoted by impressed stamps only.
- (2) Where the duty may be denoted by adhesive stamps, postage stamps may, subject to the provisions of any Act or regulation, be used for the purpose.
- (3) Every instrument written upon stamped material shall be written in such a manner, and every instrument partly or wholly written before being stamped shall be so stamped, that the stamp shall appear on the face of the instrument and cannot be used or applied to any other instrument written upon the same piece of material.
- (4) No impressed or embossed stamp or stamps made by means of a die shall be used in any manner except upon the document upon which it was originally impressed, embossed or stamped.
- (5) The amount of the duty upon any instrument may be denoted by several stamps, and stamps of greater value than is required may be used upon any instrument.

Appointment of commissioners

6. Commissioners of stamp duties

- (1) The relevant Civil Service Commission may appoint one or more officers who shall be commissioners of stamp duties and shall have the care and management of the duties to be taken under this Act.

[L.N. 131 of 1954.]

- (2) Except as otherwise provided by this Act or by any law for the time being in force, any decision, act or thing required to be made or done by a commissioner may be made or done by anyone of the said commissioners when there are more than one commissioners.
- (3) When appointing a commissioner, the President or Governor, as the case may be may signify that the duty of such commissioner shall be confined to adjudication under section 15 of this Act.

7. Discontinuance and issue of dies

- (1) Until discontinued as provided in this section, the dies for impressed revenue stamps in use at the coming into force of this Act shall continue to be used, and the commissioners may, from time to time, procure new dies of the same design.

[L.N. 131 of 1954.]

- (2) No die of new design of impressed revenue stamp shall be used without the approval of the Minister or Governor, as the case may be, and a notification of such approval shall be published in the *Federal Gazette* at least one month before such new die shall be used.
- (3) The Minister or Governor, as the case may be, may by notice in the *Federal Gazette* determine to discontinue the use of any die for the use of a revenue stamp and provide a new die to be used in lieu thereof: then from and after any day to be stated in the notice (such day not being within one month after the same is so published) the new die shall be the only lawful die for denoting the duty chargeable in any case in which the discontinued die would have been used; any and every instrument first executed by any person, or bearing date after the day so stated, and stamped with the discontinued die, shall be deemed to be not duly stamped:

Provided that:

- (a) if any instrument stamped as last aforesaid, and first executed after the day so stated at any place out of Nigeria is brought to a commissioner within 21 days after it has been received in Nigeria, then, upon proof of the facts to the satisfaction of the commissioner, the stamps thereon shall be cancelled and the instrument shall be stamped with the same amount of duty by means of the lawful die, without the payment of any penalty;
- (b) all persons having in their possession any material stamped with the discontinued dies, and which by reason of the providing of such new die has been rendered useless, may, at any time within six months after the day stated in the notice, send the said material to the Accountant-General who shall cause the stamp on such material to be cancelled and refund the amount of duty paid upon such material.

8. Instruments to be separately charged with duty in certain cases

Except where express provision to the contrary is made by this or any other Act-

- (a) an instrument containing or relating to several distinct matters shall be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of such matters;

- (b) an instrument made for any consideration or consideration in respect whereof it is chargeable with *ad valorem* duty, and also for any further or other valuable consideration, or considerations, shall be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of the considerations.

9. Facts and circumstances affecting duty to be set forth in instrument

All the facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which any instrument is chargeable, shall be fully set forth in the instrument; and every person who, with intent to defraud the Government of the Federation or of any State-

[L.N. 131 of 1954.]

- (a) executes any instrument in which all the said facts and circumstances are not fully and truly set forth; or
- (b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all the said facts and circumstances,

shall be guilty of an offence and liable on conviction to a fine of forty naira.

10. Mode of calculating *ad valorem* duty in certain cases

- (1) Where an instrument is chargeable with *ad valorem* duty in respect of-

- (a) any money in any foreign currency; or
- (b) any stock or marketable security,

the duty shall be calculated on the value, on the day of the date of the instrument, of the money in United States dollars according to the current rate of exchange, or of the stock or security according to the average price thereof.

- (2) Where an instrument contains a statement of current rate of exchange, or average rate of exchange, or average price, as the case may require, and is stamped in accordance with that statement, it shall, so far as regards the subject matter of the statement, be deemed duly stamped, unless or until it is shown that the statement is untrue, and that the instrument is in fact insufficiently stamped.

Use of adhesive stamps

11. Cancellation of adhesive stamps

- (1) An instrument, the duty upon which is required or permitted by law to be denoted by an adhesive stamp, shall not be deemed duly stamped with an adhesive stamp unless the person required by law to cancel such adhesive stamp cancels the same by writing on or across the stamp his name or, initials, or the name or initials of his firm, together with the true date of his so writing, or otherwise effectively cancels the stamp and renders the same incapable of

being used for any other instrument or for any postal purpose or for payment of a telegram:

Provided that when the person required by law to cancel an adhesive stamp is an illiterate person, the stamp shall be deemed to be sufficiently cancelled, if the mark of such person, together with the true date of the making thereof, is written on or across such stamp.

- (2) When two or more adhesive stamps are used to denote the duty upon an instrument each or every stamp shall be cancelled in the manner aforesaid.
- (3) Every person who, being required by law to cancel an adhesive stamp neglects or refuses duly and effectively to do so in the manner aforesaid, shall be guilty of an offence and liable on conviction to a fine of twenty naira.

12. Proper time for stamping instruments

- (1) Every instrument first executed in Nigeria, which by law may be or is required to be stamped with an adhesive stamp, shall be stamped on or before its first execution, and such stamp shall be cancelled by the person by whom the instrument is first executed and at the time of such execution:

[28 of 1941.]

Provided that where an instrument is prepared or attested by or executed before a commissioner of oaths, a justice of the peace or a notary public, such stamp shall be cancelled by such commissioner of oaths, justice of the peace or notary public at the time of its first execution.

13. Penalty for fraud in relation to adhesive stamps

- (1) If any person-
 - (a) fraudulently removes or causes to be removed from any instrument any adhesive stamp, or affixes to any other instrument or uses for any postal purpose any adhesive stamp which has been so removed, with intent that the stamp may be used again; or
 - (b) sells or offers for sale, or utters any adhesive stamp which has been so removed, or utters any instrument having thereon any adhesive stamp which has to his knowledge been so removed as aforesaid,he shall be guilty of an offence and liable on conviction in addition to any other fine or penalty to which he may be liable, to a fine of one hundred naira.
- (2) The expression “**instrument**” in this section, includes a telegram and any postal article within the meaning of the Nigerian Postal Services Act.

[Cap. N 127.]

Appropriated stamps

14. Appropriated stamps

- (1) A stamp which by any word or words on the face of it is appropriated to any particular

description of instrument shall not be used, or if used, shall not be available, for an instrument of any other description.

- (2) An instrument falling under the particular description to which any stamp is so appropriated as aforesaid shall not be deemed duly stamped, unless it is stamped with the stamp so appropriated.

Adjudication by a commissioner

15. As to denoting certificate

Where the duty with which an instrument is chargeable depends in any manner upon the duty paid upon another instrument, the payment of such last-mentioned duty shall, upon the application to a commissioner, payment of a fee of 26 kobo and production of both the instruments, be denoted upon such first-mentioned instrument by a certificate under the hand of the commissioner.

16. The commissioner may be required to express his opinion as to duty

- (1) Subject to such regulations as the Minister or Governor, as the case may be, may think fit to make, a commissioner may be required by any person to express his opinion with reference to the amount of duty (if any) payable on any executed instrument; and in such case, a certificate shall be endorsed on the instrument, under the hand of the commissioner, stating that, in his opinion, such instrument is not chargeable with any duty, or the particular amount with which, in his opinion, it is chargeable or, if in his opinion such is the case, that it is duly stamped:

[26 of 1946.]

Provided that nothing in this section shall extend to any instrument chargeable with *ad valorem* duty and made as a security for money or stock without limit; or shall authorise the stamping after the execution thereof of any instrument which by law cannot be stamped after execution.

- (2) An adhesive stamp for the fee prescribed under sections 15 and 66 of this Act shall be supplied to the commissioner by the person requiring the certificate at the time when the application for the certificate is made and such stamp shall be fixed to the instrument by the commissioner and cancelled by him prior to giving the certificate.

17. The commissioner may call for and refuse to proceed without evidence

In any case of application to a commissioner with reference to any instrument, the commissioner may require to be furnished with such evidence by means of affidavit or otherwise as he may deem necessary in order to show to his satisfaction whether all the facts and circumstances affecting the liability of the instrument to duty, or the amount of the duty chargeable thereon, are fully and truly set forth therein, and may refuse to proceed upon any such application until such evidence has been furnished accordingly.

18. Persons authorised to take declarations and affidavits

Any statutory declaration or affidavit made in pursuance of or for the purposes of this Act or any

other Act for the time being in force relating to stamp duties may be made before any of the commissioners or any other person authorised by law to administer oaths.

19. Effect of assessment by commissioner and payment of duty in accordance therewith

Every instrument bearing a certificate of a commissioner that it is not chargeable with duty or that it is duly stamped, or being stamped with the amount of duty assessed and certified by him shall be admissible in evidence and available for all purposes, notwithstanding any objection relating to duty:

Provided that an instrument upon which the duty has been assessed by a commissioner shall not be stamped otherwise than in accordance with the assessment of the commissioner.

20. Two commissioners not to adjudicate on same instrument

Any person, other than a public officer in the exercise of his official duties who, after an instrument has been submitted to a commissioner for his opinion as to the amount of duty with which the instrument is chargeable, subsequently submits the same instrument to a different commissioner for an expression of his opinion as to the amount of duty with which the instrument is chargeable, shall be guilty of an offence and shall be liable on conviction to a fine of twenty naira.

21. Persons dissatisfied may appeal

(1) Any person who is dissatisfied with the assessment of a commissioner may, within 21 days after the date of the assessment, and on payment of duty in conformity therewith, appeal against the assessment to the High Court of the State in which the assessment was made and may for that purpose require the commissioner to state and sign a case, setting forth the question upon which his opinion was required, and the assessment made by him.

[L.N. 47 of 1955.]

(2) The commissioner shall thereupon state and sign a case and deliver the same to the person by whom it is required, and the case may, within seven days thereafter but not later, be filed by him in the High Court and thereafter be heard by the said court.

(3) Upon the hearing of the case, the court shall determine the question submitted, and, if the instrument in question is in the opinion of the court chargeable with any duty, shall assess the duty with which it is chargeable.

(4) If it is decided by the court that the assessment of the commissioner is wrong, the court shall assess the correct amount of duty; and-

(a) in the event of an excess of duty having been paid in conformity with the erroneous decision of the commissioner, any excess of duty which may have been paid in conformity with such decision, together with any fine or penalty which may have been paid in consequence thereof, shall be ordered by the court to be repaid to the appellant, with or without costs as the court may determine; and

(b) in the event of the court assessing an amount of duty greater than that assessed by the commissioner, the difference between the amount of duty assessed by the commissioner

and the amount assessed by the court together with any fine or penalty which may have been incurred but not yet paid, with or without costs as the court may determine, shall be paid by the appellant, forthwith or within such time as the court may direct, in stamps which shall be affixed to or impressed on the document in the presence of a commissioner and in the case of adhesive stamps, cancelled by him.

22. Terms upon which instruments not duly stamped may be received in evidence

- (1) Upon the production of an instrument chargeable with any duty as evidence in any court of civil judicature in Nigeria, or before any arbitrator or referee, notice shall be taken by the judge, magistrate, arbitrator, or referee of any omission or insufficiency of the stamps thereon, and if the instrument is one which may legally be stamped after the execution thereof, it may, on payment to the officer of the court whose duty it is to read the instrument, or to the arbitrator or referee, of the amount of the unpaid duty, and the penalty payable on stamping the same, and of a further sum of two naira, be received in evidence, saving all just exceptions on other grounds.
- (2) The officer, or arbitrator, or referee receiving the duty and penalty shall give a receipt for the same, and make an entry in the proper book kept for the purpose of showing receipts of money and of the amount thereof, and shall communicate to a commissioner the name or title of the proceedings in which and of the part from whom, he received the duty and penalty, and the date and description of the instrument, and shall pay over to the Accountant-General the money so received by him for the duty and penalty.
- (3) On production to the commissioner of any instrument in respect of which any duty or penalty has been paid, together with the receipt, the payment of the duty and penalty shall be denoted on the instrument.
- (4) Except as aforesaid and subject to the provisions of section 90 (3) of this Act, an instrument executed in Nigeria, or relating, wheresoever executed, to any property situate or to any matter or thing done or to be done in Nigeria, shall not, except in criminal proceedings, be given in evidence, or be available for any purpose whatever, unless it is duly stamped in accordance with the law in force in Nigeria at the time when it was first executed.

Stamping of instruments after execution

23. Stamping of instruments after execution

- (1) Except where other express provision is made in this Act, any unstamped or insufficiently stamped instrument may be stamped with an impressed stamp at any time within forty days from the first execution thereof (unless such period of forty days is reduced by an order as provided in subsection (7) of this section) upon payment of the duty or unpaid duty only but after that time the said instrument may only be stamped upon payment of the unpaid duty and a penalty of twenty naira, and also by way of further penalty, where the unpaid duty exceeds twenty naira, of interest on such duty, at the rate of ten per cent *per annum*, from the day upon which the instrument was first executed up to the time when the amount of interest is equal to the unpaid duty.

[28 of 1941. L.N. 131 of 1954. L.N. 112 of 1964. 28 of 1941.]

- (2) Stamps representing the amount of the unpaid duty together with the penalty shall-

- (a) in the case of impressed stamps, be impressed on the instrument; and
- (b) in the case of adhesive stamps, be affixed to the instrument,

in the presence of a commissioner, who shall thereupon, in the case of adhesive stamps, cancel the stamps by writing his initials and the date thereon, and in addition, in the case of those stamps whether impressed or adhesive which do not clearly indicate that they represent a penalty, write the word “Penalty” thereon, and any such cancellation shall be effective for all purposes.

(3) In the case of such instruments hereinafter mentioned as are chargeable with *ad valorem* duty, the following provisions shall have effect-

- (a) the instrument, unless it is written upon duly stamped material, shall be duly stamped with the proper *ad valorem* duty before the expiration of thirty days after it is first executed, or after it has been first received in Nigeria if it was first executed at any place outside Nigeria;
- (b) if any such instrument executed after the coming into operation of this Act has not been or is not duly stamped in conformity with the foregoing provisions of this subsection, the person in that behalf specified in paragraph (c) of this subsection shall be guilty of an offence and liable on conviction to a fine of twenty naira, and in addition to the penalty prescribed under subsection (1) and (2) on stamping the instrument there shall be paid a further penalty equivalent to the unpaid duty thereon, unless a reasonable excuse for the delay in stamping or the omission to stamp, or the insufficiency of stamp, is afforded to the satisfaction of the commissioner, or of the court, arbitrator or referee before whom it is produced;
- (c) the instruments and persons to which the provisions of this subsection are to apply are as follows-

<i>Title of instrument as described in the Schedule</i>	<i>Person liable to penalty</i>
Bond, covenant, or instrument of any kind whatsoever	The obligee, covenantee or other person taking the security
Conveyance on sale.....	The vendee or transferee.
Conveyances or transfers operating as voluntary dispositions <i>inter vivos</i>	The grantor or transferor.
Lease.....	The lessee.
Mortgage bond, debenture, covenant, and warrant of attorney to confess and enter judgment	The mortgagee or obligee, in the case of a transfer or reconveyance, the transferee, assignee or disponent or the person redeeming the security.

Settlement.....	The settler.
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- (4) Except where other express provision is made by this Act in relation to any particular instrument, any unstamped or insufficiently stamped instrument which has been first executed at any place outside Nigeria, may be stamped, at any time within thirty days after it has been first received in Nigeria, on payment of the unpaid duty only.
- (5) Where an instrument is void unless it has been approved or sanctioned by the Minister or some public officer, the periods mentioned in this section shall be deemed to run' from the date of such approval or sanction.
- (6) Where an instrument has been submitted to a commissioner for his opinion before the period within which it may be stamped has expired, the instrument may be stamped in accordance with the assessment of the commissioner within 21 days after notice of the assessment.
- (7) The date of the approval or sanction referred to in subsection (4) and of the notice of assessment in subsection (6) of this section shall be the date upon which such approval, sanction or notice of assessment has been sent by registered or ordinary letter post to the address of the person who requested the approval or sanction referred to in subsection (5) of this section or the assessment in subsection (6) of this section, as the case may be, or after notice of such approval, sanction or assessment has been handed personally to such person or his representative.
- (8) Where the Minister or Governor, as the case may be, is of the opinion that the period of forty days specified in subsection (1) of this section or of thirty days specified in subsections (3) and (4) of this section is-
 - (a) being used in any manner for the purpose of evading the payment of stamp duties; or
 - (b) too long or too short in view of the fact that a commissioner is either easy or difficult of access for the purposes of assessing the duty payable upon any instrument or of having stamps impressed upon an instrument liable to duty, the Minister or Governor, as the case may be, may by order declare that for the period of forty days specified in subsection (1) and for the periods of thirty days specified in subsections (3) and (4) of this section or either of them, there shall be substituted such lesser or longer period of time as may be specified in the said order and thereafter such lesser period shall be substituted for the period of forty days specified in subsection (1) of this section and such lesser or longer period for the periods of thirty days specified in subsections (3) and (4) of this section or either of them, as the case may be, in the application of this section to instruments first executed or received in those towns, areas or places to which the order relates.
- (9) An order under this subsection may specify different periods of time in respect of different places and may be restricted or increased in the case of a period of time referred to in subsection (3) of this section to instruments first executed in Nigeria.

Entries upon rolls, books and documents

24. Certain rolls and books to be open to inspection

- (1) Every person having in his custody any rolls, books, records, papers, documents, or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person thereto authorised by the commissioner to inspect the rolls, books, records, papers, documents, and proceedings, and to take such notes and extracts as he deems necessary, without fee or reward, and in case of refusal, shall for every such refusal be guilty of an offence and be liable on conviction to a fine of twenty naira.
- (2) Where such rolls, books, records, papers, documents or proceedings are in the custody of any bank, such inspection shall first be made by a commissioner unaccompanied by any other person unless the commissioner decides that it is necessary for him to have assistance in determining whether any fraud or omission in relation to any duty has taken place.

25. Penalty for enrolling instrument not stamped

If any person whose office it is to enrol, register or enter in or upon any rolls, books or records any instrument chargeable with duty, enrolls, registers or enters any such instrument not being duly stamped, he shall be guilty of an offence and liable on conviction to a fine of twenty naira.

Destruction of unclaimed instruments

26. Destruction of unclaimed instruments

Where any instrument has been left with or at the office of any commissioner for any purpose connected with any of the provisions of this Act and the instrument is not claimed by the person to whom the same belongs within six months of its being so left, a notice may be inserted in an issue of the Federal *Gazette* stating that the instrument will be destroyed if not claimed by such person within two months of the publication of the notice and if the instrument is not so claimed it may be destroyed.

Regulations applicable to particular instruments

Admission

27. Mode of denoting duty

- (1) The duty payable upon an admission shall be denoted on the instrument of admission delivered to the person admitted, if there is any such instrument, or if not, on the register, entry or memorandum of the admission in the rolls, books or records of the court in which the person is admitted and in cases in which no instrument of admission is delivered, and no register, entry, or memorandum is made, on the receipt or warrant for admission.

[28 of 1941.]

- (2) If any person whose office it is to prepare or deliver out any instrument of admission chargeable with duty, or to register, enter, or make any memorandum of any admission in respect of which no instrument of admission is delivered to the person admitted, neglects or refuses, within one month after the admission, to prepare a duly stamped instrument of

admission, or to make a duly stamped register, entry, or memorandum of the admission as the case may require, he shall be guilty of an offence and liable on conviction to a fine of twenty naira.

Agreements

28. Adhesive stamps may be used for agreements

- (1) The duty of ten kobo on an agreement may be denoted by an adhesive stamp which must be cancelled by the person by whom the agreement is first signed before he delivers it out of his hands.

29. Certain mortgages of stock to be chargeable as agreements

- (1) Every instrument under hand only (not being a promissory note or bill of exchange) given upon the occasion of the deposit of any share warrant or stock certificate to bearer, or foreign share certificate or any security for money transferable by delivery, by way of security for any loan, shall be deemed to be an agreement, and shall be charged with duty accordingly.
- (2) Every instrument under hand only (not being a promissory note or bill of exchange) making redeemable or qualifying a duly stamped transfer, intended as a security, of any registered stock or marketable security shall be deemed to be an agreement and shall be charged with duty accordingly.
- (3) A release or discharge of any such instrument shall not be chargeable with any *ad valorem* duty.

30. Hire purchase agreement to be stamped

Any agreement for or relating to the supply of goods on hire, whereby the goods in consideration of periodical payments shall or may become the property of the person to whom they are supplied, shall be charged with duty as an agreement and if under seal as a deed, as the case requires, and the exemption numbered (3) under the heading "Agreement or any Memorandum of an Agreement" in the Schedule to this Act shall not apply in the case of any such instrument.

Appraisements

31. Definition of "appraiser"

- (1) For the purposes of this Act, the expression "appraiser" means a person who values or appraises any estate or property, real or personal, or any interest, whether in possession or not, in any estate or property, or any goods, merchandise, or effects for or in expectation of any hire, gain, fee or reward.

32. Appraisements to be written out

- (1) Every appraiser, by whom an appraisal or valuation chargeable with duty is made, shall, within fourteen days after the making thereof, write out the same in words and figures showing the full amount thereof, and shall duly stamp the same and if he neglects or omits so to do, or

in any other manner first discloses the amount of the appraisal or valuation, he shall be guilty of an offence and liable to a fine of one hundred naira.

[28 of 1941.]

- (2) Every person who receives from any appraiser, or pays for the making of any such appraisal or valuation, not so written out and stamped as aforesaid, shall incur a fine of forty naira.

Instruments of apprenticeship

33. Meaning of instrument of apprenticeship

Every writing relating to the service or tuition of any apprentice, clerk, or servant placed with any master to learn any profession, trade or employment, is to be deemed an instrument of apprenticeship.

Bank notes, bills of exchange and promissory notes

34. Meaning of “banker” and “bank note”

For the purposes of this Act, the expression “banker” means any person carrying on the business of banking in Nigeria and the expression “bank note” includes-

- (a) any bill of exchange or promissory note issued by any banker for the payment of money not exceeding *two* hundred naira to the bearer on demand; and
- (b) any bill of exchange or promissory note so issued which entitles or is intended to entitle the bearer or holder thereof, without endorsement or without any further or other endorsement than may be thereon at the time of the issuing thereof, to the payment of money not exceeding two hundred naira on demand, whether the same be so expressed or not and in whatever form, and by whomsoever the bill or note is drawn or made.

35. Bankers not to issue bank notes in Nigeria other than those of Central Bank of Nigeria

- (1) It shall not be lawful for any banker to issue in Nigeria any bank note.

[L.N. 112 of 1964.]

- (2) Any person who commits an offence against this section shall be guilty of an offence and liable on conviction to a fine of two hundred naira.
- (3) The provisions of this section shall not apply to the issue or uttering by any banker of bills or notes issued by the Central Bank of Nigeria.

Bills of exchange and promissory notes

36. Meaning of “bill of exchange”

For the purposes of this Act, the expression “**bill of exchange**” includes draft, order, cheque and letter of credit, and any document or writing (except a bank note) entitling or purporting to entitle

any person, whether named therein or not, to payment by any other person or to draw upon any other person for, any sum of money; and the expression “**bill of exchange payable on demand**” includes:

- (a) an order for the payment of any sum of money by a bill of exchange or a promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money or for payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen; and
- (b) an order for the payment of any sum of money weekly, monthly or at any other stated periods, and also an order for the payment by any person at any time after the date thereof of any sum of money, and sent or delivered by the person making the same to the person by whom the payment is to be made and not to the person to whom the payment is to be made, or to any person on his behalf.

37. Meaning of “promissory note”

- (1) For the purposes of this Act, the expression “**promissory note**” includes any document or writing (except a bank note) containing a promise to pay any sum of money.
- (2) A note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, shall be deemed a promissory note for that sum of money.

38. Statement of duty payable on promissory note containing guarantee

Where an instrument under hand only contains both a promissory note by a principal debtor and a guarantee by a surety but there is no memorandum of charge, pledge or deposit or other form of security, such instrument shall be stamped both as a promissory note and as a guarantee, and all other matters contained in a promissory note which would be liable to duty if contained in a separate instrument, shall be charged separately.

39. Provisions for use of adhesive stamps on bills and notes

- (1) The fixed duty of two kobo on a bill of exchange, payable on demand or at sight or on presentation or within three days after date or sight, may be denoted by an adhesive stamp, which, where the bill is drawn in Nigeria, shall be cancelled by the person by whom the bill is signed before he delivers it out of his hands, custody, or power.
- (2) The *ad valorem* duties upon bills of exchange and promissory notes drawn or made out of Nigeria are to be denoted by adhesive stamps.

40. Provisions as to stamping foreign bills and notes

- (1) Every person into whose hands any bill of exchange or promissory note, drawn or made out of Nigeria, comes in Nigeria before it is stamped shall, before he presents for payment, or endorses, transfers or in any manner negotiates, or pays the bill or note, affix thereto a proper

adhesive stamp or proper adhesive stamps of sufficient amount, and cancel every stamp so affixed thereto-

Provided:

- (a) that if at the time when any such bill or note comes into the hands of any *bona fide* holder there is affixed thereto an adhesive stamp effectually cancelled, the stamp shall, so far as it relates to the holder, be deemed to be duly cancelled, although it may not appear to have been fixed or cancelled by the proper person;
 - (b) that if at the time when any such bill or note comes into the hands of any *bona fide* holder there is affixed thereto an adhesive stamp not duly cancelled, it shall be competent for the holder to cancel the stamp as if he were the person by whom it was affixed, and upon his so doing the bill or note shall be deemed duly stamped and as valid and available as if the stamp had been cancelled by the person by whom it was affixed.
- (2) Neither of the provisions specified in paragraphs (a) and (b) of subsection (I) of this section shall relieve any person from any fine or penalty incurred by him for not cancelling an adhesive stamp.

41. Provisions as to bills and notes purporting to be drawn abroad

A bill of exchange or promissory note which purports to be drawn or made out of Nigeria shall, for the purposes of determining the mode in which the duty thereon is to be denoted, be deemed to have been so drawn or made, although it may in fact have been drawn or made in Nigeria.

42. Penalty for issuing any unstamped bill or note

- (1) Every person who issues, endorses, transfers, negotiates, presents for payment, or pays any bill of exchange or promissory note liable to duty and not being duly stamped, shall be guilty of an offence and liable on conviction to a fine of twenty naira, and the person who takes or receives from any other person any such bill or note either in payment or as a security, or by purchase or otherwise, shall not be entitled to recover thereon, or to make the same available for any purpose whatever:

Provided that if any bill of exchange payable on demand or at sight or on presentation, or within three days after date or sight is presented for payment unstamped, the person to whom it is presented may affix thereto an adhesive stamp of two kobo, and cancel the same, as if he had been the drawer of the bill, and may thereupon pay the sum in the bill mentioned, and charge the duty in account against the person by whom the bill was drawn, or deduct the duty from the said sum, and the bill shall, so far as respects the duty, be deemed valid and available.

- (2) The proviso to subsection (1) of this section shall not relieve any person from any fine or penalty incurred by him in relation to such bill.

43. One bill only of a set need be stamped

When a bill of exchange is drawn in a set according to the custom of merchants, and one of the set is duly stamped, the other or others of the set shall, unless issued or in some manner negotiated

apart from the stamped bill, be exempt from duty; and upon proof of the loss or destruction of a duly stamped bill forming one of the set, any other bill of the set which has not been issued or in any manner negotiated apart from the lost or destroyed bill may, although unstamped, be admitted in evidence to prove the contents of the lost or destroyed bill.

Bills of lading

44. Bills of lading

- (1) A bill of lading is not to be stamped after the execution thereof.
- (2) Every person who makes or executes any bill of lading not duly stamped shall be guilty of an offence and liable on conviction to a fine of one hundred naira.

Bills of sale

45. Bills of sale

A bill of sale shall not be registered under any law for the time being in force relating to the registration of bills of sale unless the original, duly stamped, is produced to the proper officer.

46. Provisions as to duty on charter-party

- (1) For the purposes of this Act, the expression “**charter-party**” includes any agreement or contract for the charter of any ship or vessel or any memorandum, letter, or other writing between the captain, master or owner of any ship or vessel, and any other person for or relating to the freight or conveyance of any money, goods, or effects on board of a ship or vessel.
[28 of 1941.]
- (2) The duty upon a charter-party may be denoted by an adhesive stamp, which shall be cancelled by the person by whom the instrument is last executed, or by whose execution it is completed as a binding contract.

47. Charter-parties executed abroad

Where a charter-party is first executed out of Nigeria without being duly stamped, any party thereto may, within ten days after it has been first received in Nigeria, and before it has been executed by any person in Nigeria, affix thereto an adhesive stamp denoting the duty chargeable thereon, and at the same time cancel such adhesive stamp, and the instrument when so stamped shall be deemed duly stamped.

[28 of 1941.]

48. Terms upon which charter-parties may be stamped after execution

A charter-party may be stamped with an impressed stamp after execution upon the following terms-

[28 of 1941.]

- (a) within seven days after the first execution thereof, on payment of the duty and a penalty

of 45 kobo;

- (b) after seven days but within one month after the first execution thereof, on payment of the duty and a penalty of twenty naira,

and shall not in any other case be stamped with an impressed stamp.

Contract notes

49. Provisions as to contract notes

- (1) For the purpose of this Act, the expression “**contract note**” means the note sent by a broker or agent to his principal, or by any person who, by way of business, deals, or holds himself out as dealing, as a principal in any stock or marketable securities, advising the principal, or the vendor or purchaser, as the case may be, of the sale or purchase of any stock or marketable security, but does not include a note sent by a broker or agent to his principal where the principal is himself acting as broker or agent for a principal.
- (2) Where a contract note is a continuation or carrying over note made for the purpose of continuing or carrying over any transaction for the sale or purchase of stock or marketable security, the contract note, although it is made in respect of both a sale and, purchase, shall be charged with duty under this section as if it related to one of those transactions only, and, if different rates of duty are chargeable in respect of those transactions, to that one of those transactions which would render the contract note chargeable at the highest rate.
- (3) Where a contract note advises the sale or purchase of more than one description of stock or marketable security, the note shall be deemed to be as many contract notes as there are descriptions of stocks or securities sold or purchased.

50. Obligation to execute contract note

- (1) Any person who effects any sale or purchase of any stock or marketable security as a broker or agent, and any person who, by way of business, deals, or holds himself out as dealing, as a principal in any stock or marketable security, and buys or sells any such stock or marketable security, shall forthwith make and execute a contract note and transmit the note to his principal, or to the vendor or purchaser of the stock or marketable security, as the case may be, and in default of so doing shall be guilty of an offence and liable on conviction to a fine of forty naira.
- (2) If any person makes or executes any contract note chargeable with duty and not being duly stamped, he shall be guilty of an offence and liable on conviction to a fine of forty naira.
- (3) No broker, agent, or other person shall have any legal claim to any charge for brokerage, commission or agency, with reference to the sale or purchase of any stock or marketable security if he fails to comply with the provisions of this section.
- (4) All stamp duties on a contract note may be denoted by an adhesive stamp which is to be cancelled by the person by whom the note is executed.

- (5) Any duty on a contract note may be added to the charge for brokerage or agency, and shall be recoverable as part of such charge.

51. Extension of provisions as to contract notes to sale or purchase of options

- (1) The provisions of this Act as to contract notes shall apply to any contract under which an option is given or taken to purchase or sell any stock or marketable security at a future time at a certain price, as it applies to the sale or purchase of any stock or marketable security, but the duty on such a contract shall be one half only of that chargeable on a contract note:

Provided that, if under the contract a double option is given or taken, the contract shall be deemed to be a separate contract in respect of each option.

- (2) Any contract note made or executed in pursuance and in consequence of the exercise of an option given or taken under a contract duly stamped in accordance with the provisions of this section, shall be charged with one half only of the duty which would otherwise have been chargeable thereon under this Act:

Provided that it bears on its face a certificate by the broker, agent or other person mentioned in section 50 of this Act to the effect that it is made or executed in the exercise of an option for which a duly stamped contract has been rendered on the date mentioned in the certificate.

Conveyances on sale

52. Meaning of “conveyance on sale”

- (1) For the purposes of this Act, the expression “**conveyance on sale**” includes-
- (a) every instrument, and every decree or order of any court whereby any property, or any estate or interest in any property, upon the sale thereof is transferred to or vested in a purchaser, or any other person on his behalf or by his direction;
 - (b) a decree or order for, or having the effect of an order for foreclosure.
- (2) Notwithstanding subsection (1) of this section-
- (a) the *ad valorem* duty upon any such decree or order shall not exceed the duty on a sum equal to the value of the property to which the decree or order relates, and where the decree or order states that value, that statement shall be conclusive for the purposes of determining the amount of the duty; and
 - (b) where *ad valorem* duty is paid upon such decree or order, any conveyance following upon such decree or order shall be exempt from the *ad valorem* duty.

53. How *ad valorem* duty is to be calculated in respect of stock and securities

- (1) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any stock or marketable security, the conveyance shall be charged with *ad valorem* duty in

respect of the value of the stock or security.

- (2) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any security not being a marketable security, the conveyance shall be charged with *ad valorem* duty in respect of the amount due on the day of the date thereof for principal and interest upon the security.

54. How consideration consisting of periodical payments to be charged

- (1) Where the consideration, or any part of the consideration, for the conveyance on sale consists of money payable periodically for a definite period not exceeding twenty years, so that the total amount to be paid can be previously ascertained, the conveyance shall be charged in respect of that consideration with *ad valorem* duty on such total amount.
- (2) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period exceeding twenty years or in perpetuity or for an indefinite period not terminable with life, the conveyance shall be charged in respect of that consideration with *ad valorem* duty on the total amount which shall or may, according to the terms of sale, be payable during the period of twenty years next after the day of the date of the instrument.
- (3) Where the consideration, or any part of the consideration, for the conveyance on sale consists of money payable periodically during any life or lives, the conveyance shall be charged in respect of that consideration with *ad valorem* duty on the amount which shall or may, according to the terms of the sale, be payable during the period of twelve years next after the day of the date of the instrument.
- (4) No conveyance on sale chargeable with *ad valorem* duty in respect of any periodical payments, and containing also provision for securing the payments, shall be charged with any duty in respect of such provision, and no separate instrument made in that case for securing the payments is to be charged with any higher duty than one naira.

55. Conveyance on sale with further covenant

A conveyance on sale made for any consideration in respect whereof it is chargeable with *ad valorem* duty, and in further consideration of a covenant by the purchaser to make, or of his having previously made, any substantial improvement of or addition to the property conveyed to him, or of any covenant relating to the subject matter of the conveyance, shall not be chargeable, and shall be deemed not to have been chargeable, with any duty in respect of such further consideration.

56. How conveyance in consideration of a debt is to be charged

Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or encumbrance upon the property or not, the debt, money or stock shall be deemed the whole or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with *ad valorem* duty.

57.Direction as to duty in certain cases

- (1) Where properly contracted to be sold for one consideration for the whole is conveyed to the purchaser in separate parts or parcels by different instruments, the consideration shall be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part or parcel is set forth in the conveyance relating thereto, and such conveyance shall be charged with *ad valorem* duty in respect of such distinct consideration.
- (2) Where properly contracted to be purchased for one consideration for the whole by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in separate parts or parcels by separate instruments to the persons by or for whom the same was purchased for distinct parts of the consideration, the conveyance of each separate part or parcel shall be charged with *ad valorem* duty in respect of the distinct part of the consideration therein specified.
- (3) Where there are several instruments of conveyance for completing the purchaser's title to property sold, the principal instrument of conveyance only shall be charged with *ad valorem* duty, and the other instruments shall respectively be charged with such other duty as they may be liable to, but the last mentioned duty shall not exceed the *ad valorem* duty payable in respect of the principal instrument.
- (4) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be charged with *ad valorem* duty in respect of the consideration moving from the sub-purchaser.
- (5) Where a person having contracted for the purchase of any property but not having obtained a conveyance, contracts to sell the whole, or any part or parts thereof, to any other person or person, and the property is in consequence conveyed by the original seller to different persons in parts or parcels, the conveyance of each part or parcel shall be charged with *ad valorem* duty in respect only of the consideration moving from the sub-purchaser thereof, without regard to the amount or value of the original consideration.
- (6) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration moving from him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable only with such other duty as it may be liable to, but the last mentioned duty shall not exceed the *ad valorem* duty.

58.Certain contracts to be chargeable as conveyances on sale

- (1) Any contract or agreement under seal, or under hand only, for the sale of any equitable estate or interest in any property whatsoever, or for the sale of any estate or interest in any property except property locally situated out of Nigeria, or goods, wares, or merchandise, or stock or marketable securities, or any ship or vessel or part interest, share, or property of or in any ship or vessel, shall be charged with the same *ad valorem* duty, to be paid by the purchaser, as if it were an actual conveyance on sale of the estate, interest or property contracted or agreed to

be sold.

- (2) Where the purchaser has paid the said *ad valorem* duty and before having obtained a conveyance or transfer of the property, enters into a contract or agreement for the sale of the same, the contract or agreement shall be charged, if the consideration for that sale is in excess of the consideration for the original sale, with the *ad valorem* duty payable in respect of such excess consideration, and in any other case with the fixed duty of two naira or ten kobo, as the case may require.
- (3) Where the duty has been paid in conformity with the foregoing provisions, the conveyance or transfer made to the purchaser or sub-purchaser, or any other person on his behalf or by his direction, shall not be chargeable with any duty, and a commissioner upon application, either shall denote the payment of the *ad valorem* duty upon the conveyance or transfer, or shall transfer the *ad valorem* duty thereto upon production of the contract or agreement, or contracts or agreements, duly stamped.
- (4) Where any such contract or agreement is stamped with the fixed duty of three naira, as the case may require, the contract or agreement shall be regarded as duly stamped for the mere purpose of proceeding to enforce specific performance or recover damages for the breach thereof.
- (5) Where any such contract or agreement is stamped with the said fixed duty, and a conveyance or transfer made in conformity with the contract or agreement is presented to a commissioner for stamping with the *ad valorem* duty chargeable thereon within a period of six months after the first creation of the contract or agreement, or within any such longer time as the commissioner may think reasonable in the circumstances of the case, the conveyance or transfer shall be stamped accordingly, and the same, and the said contract or agreement shall be deemed to be duly stamped:
- (6) Provided that nothing in this subsection shall alter or affect the provisions as to stamping an instrument after the execution thereof.
- (7) The *ad valorem* duty paid upon any such contract or agreement shall be returned by the Accountant-General on a certificate by the commissioner in case the contract or agreement be afterwards rescinded or annulled, or for any other reason be not substantially performed or carried into effect, so as to operate as or be followed by a conveyance or transfer.
- (8) Any certificate required from the commissioner under this section shall be free of charge.

59. Where interest in land transferred by sale and possession without a conveyance

Where any instrument which purports to convey any estate or interest in land, hereditament or heritage does not operate in law to transfer such estate or interest, then, if the instrument constitutes an agreement or contract to sell such estate or interest, it shall be deemed to be a contract or agreement within the meaning of section 58 of this Act:

[28 of 1941.]

Provided that where the purchaser is entitled to such an estate or interest by virtue of an instrument

creating or transferring the same and such estate, interest or instrument is registered under any Act, any contract or agreement for the sale of such estate or interest shall not be chargeable with duty under section 58 of this Act.

60. Provision as to sale of an annuity or right not before in existence

Where upon the sale of an annuity or other right not before in existence such annuity or other right is not created by actual grant or conveyance, but is only secured by bond, warrant of attorney, covenant, contract, or otherwise, the bond or other instrument, or some one of such instruments, if there be more than one, shall be charged with the same duty as an actual grant or conveyance, and shall for the purposes of this Act be deemed an instrument of conveyance on sale.

61. Principal instrument, how to be ascertained

The parties may determine for themselves which of several instruments shall be deemed the principal instrument, and may pay the *ad valorem* duty thereon accordingly.

62. Duty payable in certain cases under an Act on vesting of property

(1) Where by virtue of an Act, either-

[L.N. 112 of 1964.]

(a) any property is vested by way of sale in any person; or

(b) any person is authorised to purchase property, such person shall within three months of the passing of the Act, or the date of vesting, whichever is later, or after the completion of the purchase, as the case may be, produce to a commissioner a copy of the Act or some instrument relating to the vesting in the first case, and an instrument of the conveyance of the property in the other case, duly stamped with *ad valorem* duty payable upon a conveyance on sale of the property; and in default of such production, the duty with interest thereon at the rate of ten per cent *per annum* from the passing of the Act, date of vesting or completion of the purchase, as the case may be, shall be a debt to the Government of the Federation from such person.

63. Duty on gifts *inter vivos*

(1) Any conveyance or transfer operating as a voluntary disposition *inter vivos* shall be chargeable with the like duty as if it were a conveyance or transfer on sale, with the substitution in each case of the value of the property conveyed or transferred for the amount or value of the consideration for the sale:

[26 of 1946.]

Provided that this section shall not apply to a conveyance or transfer operating as a voluntary disposition of property to a body of persons incorporated by a special Act, if that body is by its Act precluded from dividing any profit among its members and the property conveyed is to be held for the purposes of an open space or for the purposes of its preservation for the benefit of Nigeria.

- (2) A commissioner may be required to express his opinion under section 16 of this Act on any conveyance or transfer operating as a voluntary disposition *inter vivos*, and no such conveyance or transfer shall be deemed to be duly stamped unless a commissioner has expressed his opinion thereon in accordance with that section.
- (3) Where any instrument is chargeable with duty both as a conveyance or transfer under this section and a settlement under the heading “SETTLEMENT” in the Schedule to this Act, the instrument shall be charged with duty as a conveyance or transfer under this section, and not as a settlement.
- (4) Any conveyance or transfer (not being a disposition made in favour of a purchaser or incumbrancer or other person in good faith and for valuable consideration) shall, for the purposes of this section, be deemed to be a conveyance or transfer operating as a voluntary disposition *inter vivos*, and (except where marriage is the consideration) the consideration for any conveyance or transfer shall not for this purpose be deemed to be valuable consideration where the commissioner is of opinion that by reason of the inadequacy of the sum paid as consideration or other circumstances the conveyance or transfer confers a substantial benefit on the person to whom the property is conveyed or transferred.
- (5) A conveyance or transfer made for nominal consideration for the purpose of securing the repayment of an advance or loan or made for effectuating the appointment of a new trustee or the retirement of a trustee, whether the trust is expressed or implied, or under which no beneficial interest passes in the property conveyed or transferred, or made to a beneficiary by a trustee or other person in a fiduciary capacity under any trust, whether expressed or implied, or a disentailing assurance not limiting any new estate other than an estate in fee simple in the person disentailing the property, shall not be charged with duty under this section, and this subsection shall have effect notwithstanding that the circumstances exempting the conveyance or transfer from charge under this section are not set forth in the conveyance or transfer.

64. Licence with a grant to enter upon land

A licence to a person to enter upon land coupled with a grant, whether such grant be the removal of material from land or other transfer of property, shall (where a premium is paid by the licensee) be subject to *ad valorem* duty as a conveyance on sale for the premium so paid or, where rent is paid by the licensee, be subject to duty as a lease at the rent so payable.

Conveyances on any occasion except sale or mortgage

65. What is to be deemed a conveyance on any occasion not being a sale or mortgage

Every instrument, and every decree or order of any court, whereby any property on any occasion, except a sale, or mortgage, is transferred to or vested in any person, shall be charged with duty as a conveyance or transfer of property:

Provided that a conveyance or transfer made for effectuating the appointment of a new trustee or for effectuating the retirement of a trustee although no new trustee is appointed, shall not be charged with any higher duty than one naira.

Duplicates and counterparts

66. Provision as to duplicates and counterparts

The duplicate or counterpart of an instrument chargeable with duty (except the counterpart of an instrument chargeable as a lease, such counterpart not being executed by or , on behalf of any lessor or grantor) shall not be deemed duly stamped, unless it is stamped as an original instrument, or unless it is made to appear to a commissioner (who shall upon payment of a fee of 25 kobo in adhesive stamps, certify on such duplicate or counterpart accordingly) that the full and proper duty has been paid upon the original instrument of which it is the duplicate or counterpart.

Exchange and partition or division

67. Provisions as to exchange

Where upon the exchange of any real property for any other real property, or upon the partition or division of any real property, any consideration exceeding in amount or value two hundred naira is paid or given, or agreed to be paid or given, for equality, the principal or only instrument whereby the exchange or partition is effected shall be charged with the same *ad valorem* duty as a conveyance on sale for the consideration, and with that duty only; and where in any such case there are several instruments for completing the title of either party, the principal instrument shall be ascertained, and the other instruments shall be charged with duty in the manner hereinbefore provided in the case of several instruments of conveyance.

Leases

68. Agreements to be charged as lease

- (1) An agreement for a lease, or with respect to the letting of any lands or tenements, shall be charged with the same duty as if it were an actual lease made for the term and consideration mentioned in the agreement.
- (2) A lease made subsequently to, and in conformity with, such an agreement duly stamped, is to be charged with the duty of ten kobo only.

69. Leases, how to be charged in respect of produce

- (1) Where the consideration, or any part of the consideration, for which a lease is granted or agreed to be granted, consists of any produce or other goods, the value of the produce or goods shall be deemed a consideration in respect of which the lease or agreement is chargeable with *ad valorem* duty as for a conveyance on sale.
- (2) Where it is stipulated that the value of the produce or goods is to amount at least to, or is not to exceed, a given sum, or where the lessee is specially charged with, or has the option of paying after any permanent rate of conversion, the value of the produce or goods shall, for the purpose of assessing the *ad valorem* duty, be estimated at the given sum or according to the permanent rate.

- (3) A lease or agreement for a lease made either wholly or partially for any such consideration, if it contains a statement of the value thereof, and is stamped in accordance with the statement, shall, so far as regards the subject matter of the statement, be deemed duly stamped, unless or until it is otherwise shown that the statement is incorrect, and that the lease or agreement is in fact not duly stamped.

70. Directions as to duty in certain cases

- (1) A lease or agreement for a lease or with respect to, any letting, is not to be charged with any duty in respect of any penal rent, or increased rent in the nature of a penal rent, thereby reserved or agreed to be reserved or made payable, or by reason of being made in consideration of the surrender or abandonment of any existing lease, or agreement, of or relating to the same subject matter.
- (2) A lease made for any consideration in respect whereof it is chargeable with *ad valorem* duty, and in further consideration either of a covenant by the lessee to make, or of his having previously made, any substantial improvement of or addition to the property demised to him, or of any covenant relating to the matter of the lease, shall not be charged with any duty in respect of such further consideration:

Provided that if the further consideration in the lease consists of a covenant which if it were contained in a separate deed would be charged with *ad valorem* duty, the lease shall in any such case be charged with duty in respect of any such further consideration under section 8 of this Act.

- (3) An instrument whereby the rent reserved by any other instrument chargeable with duty and duly stamped as a lease is increased, shall not be charged with duty otherwise than as a lease in consideration of the additional rent thereby made payable.

71. Duty on certain leases may be denoted by adhesive stamp

The duty upon an instrument chargeable with duty as lease for any definite term less than a year and the duty upon the duplicate or counterpart of any such instrument, may be denoted by an adhesive stamp which shall be cancelled by the person by whom the instrument is first executed.
[28 of 1941.]

Letter of allotment or renunciation, scrip certificates and scrip

72. Provisions as to letters of allotment

Every person who executes, grants, issues, or delivers out any document chargeable with duty as a letter of allotment, letter or renunciation, or scrip certificate, or as scrip, before the same is duly stamped, shall be guilty of an offence and liable on conviction to a fine of forty naira.

73. Duty on both letter of allotment and letter of renunciation

A separate duty shall be charged in respect of letters of allotment and letters of renunciation, although they may be contained in the same document.

Letters or powers of attorney and voting papers

74. Provisions as to proxies and voting papers

- (1) Every letter or power of attorney for the purpose of appointing a proxy to vote at a meeting, and every voting paper, hereby respectively charged with the duty of two kobo, shall specify the day upon which the meeting at which it is intended to be used is to be held, and shall be available only at the meeting so specified, and any adjournment thereof.
- (2) Every person who makes or executes, or votes, or attempts to vote, under or by means of any such letter or power of attorney or voting paper, not being duly stamped, shall be guilty of an offence and liable on conviction to a fine of one hundred naira, and every vote given or tendered under the authority or by means of the letter or power of attorney or voting paper, shall be void.

75. Power by more than one person or to more than one person to count as one power

No instrument chargeable with duty under the heading “LETTER OR POWER OF ATTORNEY”, and COMMISSION, FACTORY, MANDATE or other instrument in the nature thereof in the Schedule to this Act shall be charged with duty more than once by reason only that more persons than one are named in the instrument as donors or donees (whether jointly, severally or otherwise) of the powers thereby conferred or that those powers relate to more than one matter.

Marketable securities

76. Meaning of “marketable securities”

Marketable securities, whether or not transferrable by delivery for the purposes of, the charge of duty thereon, include-

- (a) a marketable security made or issued by or on behalf of any company or body of persons corporate or unincorporate formed or established in Nigeria;
- (b) a marketable security by or on behalf of any foreign State or Government, or foreign corporation (hereinafter called a “foreign security”) formed or established outside Nigeria-
 - (i) which is made or issued in Nigeria;
 - (ii) which, though originally issued out of Nigeria is offered for subscription, and is given or delivered to a subscriber in Nigeria;
 - (iii) which is assigned, transferred or in any manner negotiated in Nigeria;
- (c) a marketable security by or on behalf of any Commonwealth Government which, if the borrower were a foreign Government, would be a foreign security (hereinafter called a “Commonwealth Government Security”).

77. Meaning of marketable security transferable on delivery and instrument to bearer

An instrument used for the purpose of assigning, transferring or in any manner negotiating the right to any marketable security, share or stock, shall, if the delivery thereof is by usage treated as sufficient for the purpose of a sale on the market, whether that delivery constitutes a legal assignment, transferable on delivery or an instrument to bearer, as the case may be, and the delivery thereof an assignment, transfer or negotiation.

78. Marketable security transferable on delivery to be stamped on execution

- (1) A marketable security transferable on delivery (not being a foreign security or a Commonwealth Government Security made or issued out of Nigeria) shall be stamped on or before the issue or first execution thereof, and a foreign security made or issued out of Nigeria shall be stamped before being dealt with in the manner specified in section 75 (b) (ii) and (iii) of this Act.
- (2) Any person who contravenes the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine of forty naira.

79. Duty reduced in case of short-term marketable securities

- (1) The stamp duty charged on marketable securities transferable by delivery shall, when the amount secured by the security is to be paid off within a term not exceeding three years after the date on which the duty is payable, and the date by which the amount is to be paid off is conspicuously stated on the face of the security, be reduced to five kobo for every twenty naira or fractional part of twenty naira of the money secured, if that money is to be paid off within a term not exceeding one year from the date on which the duty is payable, and ten kobo for every twenty naira or fractional part of twenty naira of the money secured, if that money is to be paid off within a term exceeding one year but not exceeding three years from the date on which the duty is payable.

[28 of 1941.]

- (2) If the marketable security upon which the stamp duty has been charged in accordance with this section is assigned, transferred or in any manner negotiated in Nigeria after the date stated on the face of the security as the date by which the amount secured is to be paid off, stamp duty thereon shall be charged at the full rate of duty, an allowance being made for the duty already paid, and if any person in Nigeria after the said date assigns, transfers or in any manner negotiates or is concerned as booker or agent in assigning, transferring or in any manner negotiating any such security, and the security is not stamped in accordance with this provision, that person shall be guilty of an offence and liable on conviction to a fine of forty naira.
- (3) Paragraph (3) under the heading “MARKETABLE SECURITY” in the Schedule to this Act, shall not apply in the case of marketable securities given in substitution for marketable securities which have been stamped only with the reduced rate under this section.

Mortgages

80. Meaning of “mortgage” and “equitable mortgage”

- (1) For the purposes of this Act, the expression “**mortgage**” means a security by way of mortgage for the payment of any definite and certain sum of money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable, or for the repayment of money to be thereafter lent, advanced, or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be; and includes-
 - (a) conditional surrender by way of mortgage, further charge or disposition;
 - (b) any conveyance of any lands, estate or property whatsoever in trust to be sold or otherwise converted into money, intended only as a security and redeemable before the sale or other disposal thereof, either by express stipulation or otherwise, except where the conveyance is made for the benefit of creditors generally, or for the benefit of creditors specified who accept the provision made for payment of their debts in full satisfaction thereof, or who exceed five in number;
 - (c) an defeasance, letter of reversion, declaration or other deed or writing for defeating or making redeemable or explaining or qualifying any conveyance, transfer or disposition of any lands, estate or property whatsoever, apparently absolute, but intended only as a security;
 - (d) any agreement (other than an agreement chargeable with duty as an equitable mortgage), contract, or bond accompanied with a deposit of title deeds for making a mortgage, or any other security or conveyance as aforesaid of any land, estate, or property comprised in title deeds, or for pledging or charging the same as a security; and
 - (e) any deed operating as a mortgage of any stock or marketable security.
- (2) For the purposes of this Act, the expression “**equitable mortgage**” means an agreement or memorandum under hand only-
 - (a) relating to the deposit of any title deed or instrument constituting or being evidence of the title to any property whatever (other than stock or marketable security); or
 - (b) creating a charge on lands, tenements or hereditaments whether or not such charge is expressed to be created by “pledge” or otherwise.
- (3) Where a mortgage gives a power of sale to the party taking the security or power to enter into receipt of rents and profits or declaring that he is to have the power conferred by law upon mortgagees, such mortgage shall be chargeable with duty as a legal mortgage notwithstanding that it would have been an equitable mortgage had it not contained the power of sale or other provisions specified in this subsection.

81.Direction as to duty in certain cases

- (1) A security for the transfer or re-transfer of any stock shall be charged with the same duty as a similar security for a sum of money equal in amount to the value of the stock; and a transfer,

assignment or disposition of any such security, and a reconveyance, release, discharge, surrender, re-surrender, warrant to vacate, or renunciation of any such security, shall be charged with the same duty as an instrument of the same description relating to a sum of money equal in amount to the value of the stock.

- (2) A security for the payment of any rent charge, annuity, or periodical payments, by way of repayment, or in satisfaction or discharge of any loan, advance, or payment intended to be so repaid, satisfied, or discharged, shall be charged with the same duty as a similar security for the payment of the sum of money so lent, advanced or paid.
- (3) A transfer of a duly stamped security, and a security by way of further charge for money or stock, added to money or stock previously secured by a duly stamped instrument, shall not be charged with any duty by reason of its containing any further or additional security for the money or stock transferred or previously secured, or the interest or dividends thereof, or any new covenant, proviso, power, stipulation, or agreement in relation thereto, or any further assurance of the property comprised in the transferred or previous security.
- (4) An instrument chargeable with *ad valorem* duty as a mortgage shall not be charged with any further duty by reason of the equity of redemption in the mortgaged property being thereby conveyed or limited in any other manner than to a purchaser, or in trust for, or according to the direction of, a purchaser.

82. Security for future advances, how to be charged

- (1) A security for the payment or repayment of money to be lent, advanced, or paid, or which may become due upon an account current, either with or without money previously, due, shall be charged, where the total amount secured or to be ultimately recoverable is in any way limited, with the same duty as a security for the amount so limited.
- (2) Where such total amount is unlimited, the security shall be available for such an amount only as the *ad valorem* duty impressed thereon extends to cover, but where any advance or loan is made in excess of the amount covered by that duty, the security shall, for the purposes of stamp duty, be deemed to be a new and separate instrument, bearing date on the day on which the advance or loan is made:

Provided that no money to be advanced for the insurance of any property comprised in the security against damage by fire, or for keeping up any policy of life insurance comprised in the security, or for effecting in lieu thereof any new policy, or for the renewal of any grant or lease of any property comprised in the security upon the dropping of any life wherein the property is held, shall be reckoned as forming part of the amount in respect whereof the security is chargeable with *ad valorem* duty.

Notarial acts

83. Duty on notarial acts may be denoted by adhesive stamps

The duty upon a notarial act and upon the protest by a notary public of a bill of exchange or promissory note may be denoted by an adhesive stamp which shall be cancelled by the notary.

Policies of insurance

84. Interpretation

For the purposes of this Act, unless the context otherwise requires-

“policy of insurance” includes every writing other than cover notes, slips or other instruments usually made in anticipation of the issue of formal policy of marine insurance, and instruments embodying alterations of the terms or conditions of any formal policy of marine insurance whereby any contract of insurance is made or agreed to be made, or is evidenced, and the expression **“insurance”** includes assurance;

[1961 No. 65.]

“policy of life insurance” means a policy of insurance upon any life or lives or upon any event or contingency relating to or depending upon any life or lives except a policy of insurance against accident;

“policy of insurance against accident” means a policy of insurance for any payment agreed to be made upon the death of any person only from accident or violence or otherwise than from a natural cause, or as compensation for personal injury, and includes any notice or advertisement in a newspaper or other publication which purports to insure the payment of money upon the death of or injury to the holder or bearer of the newspaper or publication containing the notice only from accident or violence, or otherwise than from a natural cause; and also includes policies of insurance or indemnity against liability incurred by employers in consequence of claims made upon them by workmen who have sustained personal injury where the annual premium on such policies does not exceed four naira;

“policy of insurance for any payment agreed to be made during the sickness of any person or his incapacity from personal injury” includes any notice or advertisement in a newspaper or other publication which purports to insure such payment;

“policy of insurance for any payment agreed to be made by way of indemnity against loss or damage of or to any property” includes any notice or advertisement in a newspaper or other publication which purports to insure such payment;

“policy of marine insurance” means any formal contract whereby an insurer undertakes to indemnify an assured against losses incident to marine adventure, and includes any contract relating to insurance of a ship or the machinery or fittings belonging to the ship whilst under construction or repair or on trial.

85. Stamp on policy of insurance against accident and sickness

A policy of insurance against accident is not to be charged with any further duty than six kobo by reason of the same extending to any payment to be made during sickness or incapacity from personal injury.

[28 of 1941.]

86. Duty on policy of marine insurance

A policy of marine insurance shall be charged with the duty prescribed in the Schedule to this Act.

87. Penalty for not making out policy of insurance or making any policy not stamped

Any person who-

- (a) receives or takes credit for, any premium or consideration for any insurance and does not within one month after receiving, or taking credit for, the premium or consideration, make out and execute a duly stamped policy of insurance; or
- (b) makes, executes or delivers out, or pays or allows in account, or agrees to pay or allow in account, any money upon or in respect of any policy of insurance which is not duly stamped,

shall be guilty of an offence and liable on conviction to a fine of forty naira.

88. Assignment of policy of life assurance to be stamped before payment of money assured

- (1) No assignment of a policy of life assurance shall confer on the assignee therein named, his executors, administrators, or assigns, any right to sue for the money assured or secured thereby, or to give a valid discharge for the same, or any part thereof, unless the assignment is duly stamped, and no payment shall be made to any person claiming under any such assignment unless the same is duly stamped.
- (2) If any payment is made in contravention of this section the duty not paid upon the assignment together with the penalty payable on stamping the same, shall be a debt due to the Government of the Federation from the person by whom the payment is made.

Receipts

89. Provisions as to duty upon receipts

- (1) For the purposes of this Act, the expression “**receipt**” includes any note, memorandum, writing whereby any money, or bill of exchange or promissory note for money is acknowledged or expressed to have been received or deposited or paid, or whereby any debt or demand, or any part of a debt or demand is acknowledged to have been settled, satisfied, or discharged, or which signifies or imports any such acknowledgement, and whether the same is or is not signed with the name of any person.

[2020 No. 1, s. 47]

- (2) The duty upon a receipt may be denoted by an adhesive stamp which is to be cancelled by the person by whom the receipt is given before he delivers it out of his hands or by a digital tag with electronic stamp.

[2020 No. 1, s. 47]

[Former (3) Deleted by 2020 No. 1, s. 47]

- (3) Any duty paid under subsection (1) to (3) shall be applied as a credit against any duty applicable on an instrument denoted with an adhesive stamp.

[2019 No. 1, s. 54]

89A. Electronic money transfer levy

- (1) There is imposed a levy, to be referred to as the Electronic Money Transfer Levy, on electronic receipts or electronic transfer for money deposited in any deposit money bank or financial institution, on any type of account, to be accounted for and expressed to be received by the person to whom the transfer or deposit is made.

[2020 No. 1, s. 48]

- (2) The levy shall be imposed as a singular and one-off charge of ₦50 on electronic receipts or electronic transfers of money in the sum of ₦10,000 or more.

[2020 No. 1, s. 48]

- (3) The Minister of Finance shall, subject to the approval of the National Assembly, make regulations for the imposition, administration, collection and remittance of the Levy, including regulations relating to the auditing, accounting, allocation and distribution of arrears of the relevant stamp duties and Electronic Money Transfer Levies collected between 2015 and 2019 fiscal years, within 30 days of the date when this Act became effective:

[2021 No. 1, s. 27]

- (4) Notwithstanding any formula that may be prescribed by any other law, the revenue accruing by virtue of the operation of this section, shall, on the basis of derivation, be distributed as follows-

(a) 15% to the Federal Government and the Federal Capital Territory, Abuja; and

(b) 50% to the State Governments.

(c) 35% to the Local Governments.

[2020 No. 1, s.48; 2023 No. 1, s. 21]

90. [Deleted by 2019 No.1, s. 55]

91. Terms upon which receipts may be stamped after execution and used in evidence unstamped

- (1) A receipt given without being stamped may be stamped with an impressed stamp on the following terms-

[28 of 1941.]

(a) within 28 days after it has been given, on payment of the duty and a penalty of four naira;

(b) after 28 days, but within 56 days, on payment of the duty and a penalty of

twenty naira, and shall not in any other case be stamped with an impressed stamp.

- (2) The payment of the penalty under subsection (1) of this section shall be certified on the face of the receipt under the hand of a commissioner.
- (3) Where in any legal proceedings or before any arbitrator or referee a receipt is inadmissible by reason of it not being duly stamped, the officer presiding over the court, the arbitrator or referee may, having regard to the illiteracy and ignorance of the party tendering the receipt in evidence, admit the receipt upon payment of a penalty of four naira and the officer presiding over the court, the arbitrator or referee, as the case may be, shall note the payment of the penalty upon the face of the receipt so admitted and a receipt shall be given for the same.
- (4) A receipt so admitted in evidence shall not be deemed to be duly stamped but shall be available for the purposes of the suit in which it is tendered in evidence and for that purpose only.
- (5) Where a person has been permitted under this subsection to tender a receipt not duly stamped upon payment of the penalty of four naira, such person may recover the said sum of four naira from the person whose duty it was to stamp the receipt at the time when it was first issued.
- (6) Nothing contained in this section shall relieve any person from any other penalty incurred by him in relation to such receipt.

92. Penalty for offences in reference to receipts

If any person-

- (a) gives a receipt liable to duty and not duly stamped; or
- (b) in any case where a receipt would be liable to duty, refuses to give a receipt duly stamped; or
- (c) upon a payment to the amount of four naira or upwards, gives a receipt for a sum not amounting to four naira, or separates or divides the amount paid with the intent to evade the duty,

he shall be guilty of an offence and liable on conviction to a fine of twenty naira.

Settlements

93. Provisions as to settlement of policy or security

Where any money which may become due or payable upon any policy of life insurance, or upon any security not being a marketable security, is settled or agreed to be settled, the instrument whereby the settlement is made or agreed to be made shall be charged with *ad valorem* duty in respect of that money:

Provided that-

- (a) where, in the case of a policy, no provision is made for keeping up the policy, the *ad*

valorem duty shall be charged only on the value of the policy at the date of the instrument;

- (b) if in any such case, the instrument contains a statement of the said value, and is stamped in accordance with the statement, it shall, so far as regards the policy, be deemed duly stamped, unless or until it is shown that the statement is untrue, and that the instrument is in fact insufficiently stamped.

94. Settlements; when not to be charged as securities

An instrument chargeable with *ad valorem* duty as a settlement in respect of any money, stock, or security shall not be charged with any further duty by reason of containing provision for the payment or transfer of the money, stock, or security, or by reason of containing, where the money, stock, or security is in reversion or is not paid or transferred upon the execution of the instrument, provision for the payment by the person entitled in possession to the interest or dividends of the money, stock, or security, during the continuance of such possession, of any annuity or yearly sum not exceeding interest at the rate of eight per cent *per annum* upon the amount or value of the money, stock or security.

95. Where several instruments, one only to be charged with *ad valorem* duty

- (1) Where several instruments are executed for effecting the settlement of the same property, and the *ad valorem* duty chargeable in respect of the settlement of the property exceeds one naira, only one of the instruments shall be charged with the *ad valorem* duty.
- (2) Where a settlement is made in pursuance of a previous agreement upon which *ad valorem* settlement duty exceeding one naira has been paid in respect of any property, the settlement shall not be charged with *ad valorem* duty in respect of the same property.
- (3) In each of the aforesaid cases the instruments not chargeable with *ad valorem* duty shall be charged with the duty of one naira.

Share warrants

96. Penalty for issuing share warrant not duly stamped

If a share warrant or any instrument to bearer issued by or on behalf of any company or body of persons formed or established in Nigeria and having a like effect as a share warrant or any stock certificate to bearer is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be guilty of an offence and liable on conviction to a fine of one hundred naira.

Stock certificates to bearer

97. Meaning of stock certificate to bearer

For the purposes of this Act, the expression “**stock certificate to bearer**” includes every stock certificate to bearer issued after the coming into operation of this Act, under the provisions of the Companies and Allied Matters Act, or of any other enactment authorising the creation of debenture

stock, corporation stock, municipal stock or funded debt, by whatever name known, and also includes any instrument to bearer issued by or on behalf of any company or body of persons formed or established in Nigeria and having a like effect as such a stock certificate to bearer.

[Cap. C20.]

98. Penalty for neglecting to cancel stock certificate upon registration

- (1) Where the holder of a stock certificate to bearer or an instrument to bearer chargeable as a stock certificate to bearer has been entered on the register of any local authority or corporation or company or body of persons formed or established in Nigeria, as owner of the share of stock described in the certificate, the certificate shall be forthwith cancelled so as to be incapable of being reissued to any person.
- (2) Every person by whom a stock certificate to bearer or an instrument to bearer chargeable as a stock certificate to bearer is issued without being duly stamped, shall be guilty of an offence and liable on conviction to a fine of one hundred naira.

Warrant for goods

99. Meaning and provisions as to warrants for goods

- (1) For the purposes of this Act, the expression "warrant for goods" means any document or writing, being evidence of the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods, wares of merchandise lying in any warehouse or dock, or upon any wharf, and signed or certified by or on behalf of the person having the custody of the goods, wares or merchandise.
- (2) The duty upon a warrant for goods may be denoted by an adhesive stamp, which shall be cancelled by the person by whom the instrument is made, executed or issued.
- (3) Every person who makes, executes or issues, or receives, or takes by way of security or indemnity, any warrant for goods not being duly stamped, shall be guilty of an offence and liable on conviction to a fine of forty naira.

PART III

Supplemental

Duty on capital of companies

100. Charge of duty on capital of limited liability companies

- (1) A statement of the amount which shall form the nominal share capital of any company to be registered with limited liability and a statement of the amount of any increase of registered capital of any company, shall be delivered to the Corporate Affairs Commission established under the Companies and Allied Matters Act.

[L.N. 112 of 1964. Cap. C20.]

- (2) The statements referred to in subsection (1) of this section shall be charged with an *ad valorem* duty of one naira for every two hundred naira and any fraction of two hundred naira over any multiple of two hundred naira of the amount of such capital or increase of capital, as the case may be.
- (3) The statement of the amount of any increase of registered capital which is required to be delivered to the Corporate Affairs Commission under subsection (1) of this section shall be delivered duly stamped with the duty charged thereon within fifteen days after the passing of the resolution by which the registered capital is increased, and, in default of that delivery, the duty, with interest thereon at the rate of five per cent *per annum* from the passing of the resolution, shall be a debt to the Government of the Federation recoverable from the company.

101. Charge of duty on capital of companies with limited liability otherwise than under Cap. C20

- (1) Where, by virtue of any letters patent or by any Act or Law or by any other lawful authority, the liability of holders of shares in the capital of any corporation or company is limited otherwise than by registration with limited liability under the law in that behalf, a statement of the amount of nominal share capital of the corporation or company shall be delivered by the corporation or the company to the Corporate Affairs Commission within one month after the date of the letters patent or the passing of the Act or Law or the granting of the authority; and in case of any increase of the amount of the nominal share capital of any corporation or company being authorised by any letters patent, Act or Law or other authority, a statement of the amount of such increase shall be delivered by the corporation or company to the Corporate Affairs Commission within the like period.

[L.N. 131 of 1954.]

- (2) The statements referred to in subsection (1) of this section shall be charged with an *ad valorem* duty of one naira for every two hundred naira and any fraction of two hundred naira over any multiple of two hundred naira of the amount of such capital or increase of capital, as the case may be.
- (3) The statements to be delivered in accordance with subsection (1) of this section shall be delivered with the duty charged thereon duly paid and in default of that delivery, the corporation or company shall pay to the Minister or Governor, as the case may be, a sum equal to ten per cent *per annum* upon the amount of duty payable, and a like penalty for every month after the first month during which the default shall continue.

102. Duty on loan capital

- (1) Where any corporation, company or body of persons formed or established in Nigeria propose to issue any loan capital, they shall, before the issue thereof, deliver to the Corporate Affairs Commission a statement of the amount proposed to be secured by the issue.

[L.N. 112 of 1964.]

- (2) Subject to the provisions of this section, every such statement shall be charged with *ad valorem* duty of 25 kobo for every 200 naira and any fraction of 200 naira over any multiple of 200 naira of the amount proposed to be secured by the issue, and the amount of the duty

shall be a debt due to the Government of the Federation.

- (3) The duty under this section shall not be charged to the extent to which it is shown to the satisfaction of the Corporate Affairs Commission that the duty in respect of a mortgage or marketable security has been paid on any trust deed or other document securing the loan capital proposed to be issued.
- (4) If any corporation, company or body of persons neglect to deliver a statement, or fails to pay the duty in compliance with the provisions of this section, that corporation, company or body of persons shall be liable to pay the Government of the Federation, in addition to the duty, a sum equal to ten per cent upon the amount of the duty, and a like sum for every month after the first month during which the neglect or failure continues.

“Definition of “loan capital”

- (5) In this Act and in section 102 of this Act, **“loan capital”** means any debenture stock, other stock or funded debt by whatever name known or any capital raised by any corporation, company or body of persons formed or established in Nigeria, which is borrowed, or has the character of borrowed money, whether it is in the form of stock or in any other form, but does not include any overdraft at the bank or other loan raised for a merely temporary purpose for a period not exceeding twelve months.

103. Reduction of duty on loan capital issued for the purpose of the conversion or consolidation of existing capital

- (1) Where it is shown to the satisfaction of the Corporate Affairs Commission that the loan capital issued by any corporation, company or body of persons, in respect of which a statement is required to be issued under section 102 of this Act, has been wholly or in part applied for the conversion or consolidation of then existing loan capital, that corporation, company or body of persons, *as the case may be*, shall be entitled to repayment in respect of the duty charged on the statement so delivered at the rate of twenty kobo for every 200 naira of the capital to which the statement relates which is so shown to have been applied for the purpose of the conversion or consolidation of the then existing loan capital; but this section shall not apply to any duty payable in respect of a mortgage or marketable security which has been paid on any trust deed or other document securing the loan capital which has been issued.
- (2) If it is represented to the Corporate Affairs Commission by such corporation, company or body of persons that loan capital about to be issued by them is to be applied, in whole or in part, for the purpose of the conversion or consolidation of existing loan capital, the Corporate Affairs Commission may postpone the time or the delivery of the statement and the payment of duty under section 102 of this Act until the capital has been issued or until such other time as the Corporate Affairs Commission may think fit for the purpose of enabling the payment and repayment of the duty to take place as far as practicable as one transaction.
- (3) The repayment shall be made by the Accountant-General upon receipt from the Corporate Affairs Commission of such particulars as the Minister may generally or in any particular case require to be given.

104. Relief from capital and transfer duty in case of reconstructions or amalgamation of companies

- (1) If in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any companies it is shown to the satisfaction of a commissioner that there exist the following conditions, that is to say-

[LN. 131 of 1954. LN. 112 of 1964.]

- (a) that a company with limited liability is to be registered, or that since the commencement of this Act a company has been incorporated by letters patent, Act or Law, or the nominal share capital of a company has been increased;
- (b) that the company (in this section referred to as “the transferee company”) is to be registered or has been incorporated or has increased its capital with a view to the acquisition either of the undertaking of, or of not less than ninety per cent of the issued capital of, any particular existing company;
- (c) that the consideration for the acquisition (except such part thereof as consists in the transfer to or discharge by the transferee company of liabilities of the existing company) consists as to not less than ninety per cent thereof-
 - (i) where an undertaking is to be acquired, in the issue of shares in the transferee company to the existing company or to holders of shares in the existing company; or
 - (ii) where shares are to be acquired, in the issue of shares in the transferee company to the holders of shares in the existing company in exchange for the shares held by them in the existing company,

then, subject to the provisions of this section, the provisions of subsections (2) and (3) of this section shall have effect with respect to the relief from capital and transfer duty as a result of the reconstruction or amalgamation of the company or companies, as the case may be.

- (2) The nominal share capital of the transferee company, or the amount by which the capital of the transferee company has been increased, as the case may be, shall, for the purpose of computing the duty chargeable in respect of that capital, be treated as being reduced by either-
- (a) an amount equal to the amount of the share capital of the existing company or, in the case of the acquisition of a part of an undertaking, equal to such proportion of the said share capital as the value of that part of the undertaking bears to the whole value of the undertaking; or
 - (b) the amount to be credited as paid up on the shares to be issued as such consideration as aforesaid and on the shares (if any) to be issued to creditors of the existing company in consideration of the release of debts (whether secured or unsecured) due or accruing due to them from the existing company or of the assignment of such debts to the transferee company,

whichever amount is the less.

- (3) Duty under the heading “CONVEYANCE OR TRANSFER SALE” in the Schedule to this Act shall not be chargeable on any instruments made for the purposes of or in connection with the transfer of the undertaking or shares or on any instrument made for the purposes of or in connection with the assignment to the transferee company of any debts, secured or unsecured, of the existing company, nor shall any such duty be chargeable under section 62 of this Act on a copy of any Act or Law or on any instrument vesting, or relating to the vesting of, the undertaking or shares in the transferee company-

Provided that-

- (a) no such instrument shall be deemed to be duly stamped unless either it is stamped with the duty to which it would but for this section be liable or it has, in accordance with the provisions of section 16 of this Act, been certified by the commissioner either that it is not chargeable with any duty or that it is duly stamped; and
- (b) in the case of an instrument made for the purposes of or in connection with a transfer to a company within the meaning of the Companies and Allied Matters Act, the provisions of this subsection shall not apply unless the instrument is either-
- [Cap. C20.]
- (i) executed within a period of twelve months from the date of the registration of the transferee company or the date of the resolution for the increase of the nominal share capital of the transferee company, as the case may be; or
- (ii) made for the purposes of effecting a conveyance or transfer in pursuance of an agreement which has been filed, or particulars of which, have been filed with the Corporate Affairs Commission within the said period of twelve months; and
- (c) the foregoing provision with respect to the release and assignment of debts of the existing company shall not, except in the case of debts due to banks or to trade creditors, apply to debts which were incurred less than two years before the proper time for making a claim for exemption under this section.
- (4) For the purposes of a claim for exemption under subsection (3) of this section, a company which has, in connection with a scheme of reconstruction or amalgamation, issued any unissued share capital shall be treated as if it had increased its nominal share capital.
- (5) A company shall not be deemed to be a particular existing company within the meaning of this section unless it is provided by the memorandum of association of, or the letters patent, Act or Law incorporating the transferee company that one of the objects for which the company is established is the acquisition of the undertaking of, or shares in, the existing company or unless it appears from the resolution, Act or Law or other authority for the increase of the capital of the transferee company that the increase is authorised for the purpose of acquiring the undertaking of, or share in, the existing company.
- (6) In a case where the undertakings of or shares in two or more companies are to be acquired,

the amount of the reduction to be allowed under this section, in respect of the duty chargeable in respect of the nominal share capital or the increase of the capital of a company, shall be computed separately in relation to each of those companies.

- (7) Where a claim is made for exemption under this section, the commissioner may require the delivery to him of a statutory declaration in such form as he may direct, made in Nigeria by a legal practitioner, and of such further evidence (if any) as the commissioner may reasonably require.
- (8) If-
 - (a) where any claim for exemption from duty under this section has been allowed, it is subsequently found that any declaration or other evidence furnished in support of the claim was untrue in any material particular, or that the conditions specified in subsection (1) of this section are not fulfilled in the reconstruction or amalgamation as actually carried out; or
 - (b) where shares in the transferee company have been issued to the existing company in consideration of the acquisition, the existing company within a period of two years from the date, as the case may be, of the registration or incorporation, or of the authority for the increase of the capital, of the transferee company ceases, otherwise than in consequence of reconstruction, amalgamation or liquidation, to be the beneficial owner of the shares so issued to it; or
 - (c) where any such exemption has been allowed in connection with the acquisition by the transferee company of shares in another company, the transferee company within a period of two years from the date of its registration or incorporation or of the authority for the increase of its capital, as the case may be, ceases, otherwise than in consequence of reconstruction, amalgamation or liquidation, to be the beneficial owner of the shares so acquired,

the exemption shall be deemed not to have been allowed, and an amount equal to the duty remitted shall become payable forthwith, and shall be recoverable from the transferee company as a debt due to the Government of the Federation, together with interest thereon at the rate of five per cent *per annum* in the case of duty remitted under subsection (2) of this section from the date of the registration or incorporation of the transferee company or the increase of its capital, as the case maybe, and in the case of duty remitted under subsection

(3) of this section of the said subsection from the date on which it would have become chargeable if this section had not been passed.

- (9) If in the case of any scheme of reconstruction or amalgamation, a commissioner is satisfied that at the proper time for making a claim for exemption from duty under subsection (2) and (3) of this section there were in existence all the necessary conditions for such exemption other than the condition that not less than ninety percent of the issued share capital of the existing company would be acquired by the transferee company, the commissioner may, if it is proved to his satisfaction that not less than ninety percent of the issued capital of the existing company has under the scheme been acquired within a period of six months from the earlier of the two following dates, that is to say-

- (a) the last day of the period of one month after the first allotment of shares made for the purposes of the acquisition; or
- (b) the date on which an invitation was issued to the shareholders of the existing company to accept shares in the transferee company,

and on production of the instrument on which the duty paid has been paid, direct repayment to be made of such an amount of duty as would have been remitted if the said conditions had been originally fulfilled.

Definitions

- (10) In this section, unless the context otherwise requires-
 - (a) references to the undertaking of an existing company include references to a part of the undertaking of an existing company; and
 - (b) the expression “**shares**” includes stock.

105. Relief from transfer duty in the case of transfer of property as between associated companies

- (1) Duty under the heading “CONVEYANCE OR TRANSFER ON SALE” in the Schedule to this Act shall not be chargeable on an instrument to which this section applies:
[28 of 1941]

Provided that no such instrument shall be deemed to be duly stamped unless either it is stamped with the duty to which it would but for this section be liable, or it has in accordance with the provisions of section 15 been certified by a commissioner either that it is not chargeable with any duty or that it is duly stamped.

- (2) This section applies to any instrument as respects which it is shown to the satisfaction of the commissioner that the instrument was not executed in pursuance of or in connection with an arrangement whereunder-
 - (a) the consideration for the transfer or conveyance was to be provided directly or indirectly by a person other than a company which at the time of the execution of the instrument was associated with either the transferor or the transferee; or
 - (b) the beneficial interest in the property was previously conveyed or transferred directly or indirectly by such person as aforesaid.
- (3) For the purpose of this section, a company shall be deemed to be associated with another company if, but not unless, both are companies with limited liability, and either-
 - (a) one of them is the beneficial owner of not less than ninety per cent of the issued share capital of the other; or

- (b) not less than ninety per cent of the issued share capital of each of them is in the beneficial ownership of a third company with limited liability.

Miscellaneous

106. Innocent person suffering loss may recover against guilty person

Where any person, by the production of an unstamped or insufficiently stamped instrument or otherwise, renders himself subject to a fine, penalty or forfeiture and is made thereby to suffer any fine, penalty or forfeiture but is not the person whose duty it was by law originally to provide for the stamping of the document, such first mentioned person shall upon proof to the satisfaction of a court that he was not the person originally responsible for having the document stamped and that he has thereby suffered a fine, penalty or forfeiture, be entitled to obtain judgment for the amount to which he has been penalised, together with costs, against the person whose duty it originally was to have the document stamped.

107. Power to make regulations for compounding duty

Where the collection of duty or the stamping of instruments according to the provisions of this Act is impracticable or inexpedient, or where such collection or stamping causes undue inconvenience to trade or business or where the exercise of the power conferred by this section is in the interest of Nigeria or of a State thereof, the President or Governor, as the case may be, may make regulations-

[L.N. 131 of 1954.]

- (a) for compounding any duty; or
- (b) for delivery of accounts by, and collecting duty from, the persons making or issuing the instruments upon which the duty is charged.

108. Conditions and agreements as to duty void

Every condition of sale framed with the view of precluding objection or requisition upon the ground of absence or insufficiency of stamp upon any instrument executed after the commencement of this Act, and every contract, arrangement, or undertaking for assuming the liability on account of absence or insufficiency of stamp upon any such instrument or indemnifying against such liability, absence or insufficiency, shall be void.

109. Provision for remission of duty in certain cases

Where it is shown to the satisfaction of the President or Governor that duty has been paid on an instrument in Nigeria in addition to stamp duty already paid elsewhere, the President or Governor, as the case may be, may, if he considers it advisable in the interest of Nigeria or of the State, as the case may be, to do so, authorise a refund of the duty paid in Nigeria, or such portion thereof as may to him seem fit.

[L.N. 131 of 1954.]

110. Duty and debts recoverable with fines and penalties

Proceedings for the recovery of any duty imposed by this Act or for the recovery of any debt due to the Government of the Federation under this Act may be included in any proceedings for the recovery of a fine or penalty under this Act.

111. Duties and fines may be recovered summarily

All duties, fines, penalties and debts due to the Government of the Federation imposed by this Act shall be recoverable in a summary manner in the name of the Attorney General of the Federation or of the State.

[L.N. 131 of 1954, L.N, 112 of 1964.]

112. Fixed penalties

The amount to which any person is declared to be liable in respect of any fine or penalty and the amount due as a debt to the Government of the Federation under this Act shall not, except as hereinafter provided, be subject to any mitigation.

[L.N, 112 of 1964.]

113. Power to mitigate fines and stay proceedings

(1) The President or Governor, as the case may be, may in his discretion mitigate any fine or penalty or debt due to the Government of the Federation under this Act or stay or compound any proceedings for recovery thereof and may also after judgment further mitigate or entirely remit any such fine, penalty or debt.

[L.N. 131 of 1954.]

(2) The decision of the President or Governor, as the case may be, to stay or compound any proceedings which have been commenced, may be intimated to the court by a law officer or State counsel or some person on behalf of a law officer or State counsel.

114. Fines and penalties recoverable within five years

All proceedings for the recovery of any duty, fine, penalty and debt due to the Government of the Federation imposed by this Act, may be commenced or prosecuted at any time within five years after the offence committed by reason whereof such duty, fine, penalty or debt shall be incurred.

[L.N. 112 of 1964.]

115. Power to make regulations relating to stamp duties

In addition to the powers conferred on him by sections 15 and 105 of this Act, the President and the Governor of a State may make regulations relating-

- (a) to the custody of the dies to be used under this Act;
- (b) to the circumstances in which allowance shall be made for spoiled stamps; (c) to the accounting for the revenue derived from stamp duties;

- (c) to the substitution of adhesive stamps for impressed stamps, or of impressed stamps for adhesive stamps, or of revenue stamps for postage and revenue stamps;
- (d) to the manner in which and the persons by whom impressed stamps shall be affixed to documents; and
- (e) to the further and better carrying into effect of the objects and purposes of this Act.

116. Schedule may be varied by resolution and order

- (1) The National Assembly may by resolution increase, diminish or repeal the duty chargeable under any of the heads specified in the Schedule to this Act in respect of the documents regarding which the Government of the Federation is competent to make laws, and in respect of any other matter within such competence may add new duties or otherwise add to, vary or revoke the Schedule.

[L.N. 131 of 1954.]

- (2) The House of Assembly of a State may by resolution increase, diminish or repeal the duty chargeable under any of the heads specified in the Schedule in respect of documents regarding which the Government of a State is exclusively competent to make laws, and in respect of any other matter within such exclusive competence may add new duties or otherwise add to, vary or revoke the Schedule.

117. Certain temporary occupation licences not liable to duty under Cap. 126 of the 1923 edition

Whereas doubts have arisen as to whether or not a temporary occupation, licence granted under the Land Use Act previous to the coming into force of this Act is liable to stamp duty under the Stamp Act, it is hereby declared that all such instruments which have not previously been stamped shall be deemed not to have been liable to stamp duty under the said Act.

[Cap. L5. Cap. 126 of 1923 Edition.]

118. Repeal of Cap. 126 of 1923 edition and amending Act

The Stamp Act, the Stamp (Amendment) Act, 1928, the Stamp (Amendment) Act, 1931; all Orders in Council made under section 4 of the Stamp Act, all regulations and all appointments made under the Stamp Act are hereby respectively repealed, revoked and cancelled:

[Cap. 126 of 1923 Edition.]

Provided that where an instrument has been first executed before the coming into operation of this Act such instrument shall be stamped in accordance with the provisions of the Act hereby repealed.

SCHEDULE

[Section 3, etc.]

[L.N 49 of 1961.]

ADMISSION as a barrister or solicitor.....₦ k
50 : 00

Exemptions: Admission as a military advocate under the provisions of the Military Advocates Rules, 1942. (Added by Resolution and Order 2 of 1942).

[Rules of Court 5 of 1952.]

As a notary public₦ k
20 : 00

See Licence and sections 25 and 27

AFFIDAVIT, AFFIRMATION AND STATUTORY DECLARATION

Except where express provision is made as to the manner in which it is to be taken.....45

Exemptions:

- (1) Affidavit or affirmation made for the immediate purpose of being filed, read, or used in any court in Nigeria, or before any judge or officer of any such court.
- (2) Affidavit, affirmation or declaration made upon a requisition of a commissioner under this Act, or a commissioner of any public board of revenue in Nigeria or any of the officers acting under them, or required by any law of Nigeria.
- (3) Affidavit, affirmation or declaration which may be required by the Central Bank of Nigeria to prove the death of any proprietor of any stock transferable there, or to identify the person of any such proprietor, or to remove any other impediment to the transfer of any such stock.

AGREEMENT OR CONTRACT, accompanied with a deposit. *See* Mortgage and sections 29 and 80.

AGREEMENT for a lease or for any letting. *See* Lease and section 68.

AGREEMENT for Sale of Property. *See* Conveyance on Sale and section 58.

AGREEMENT or any MEMORANDUM of an AGREEMENT under hand only and not otherwise specifically charged with any duty, whether the same be only evidence of a contract or obligatory upon the parties from its being a written instrument.....15

Exemptions:

- (1) Agreement or Memorandum the matter whereof is not of the value of N10.
- (2) Agreement or Memorandum for the hire of any labourer, artificer, manufacturer or menial servant.
- (3) Agreement, Letter or Memorandum made for or relating to the sale or any goods, wares, or merchandise.

See sections 28, 29 and 30

₦ k

AGREEMENT, HIRE PURCHASE

ADMISSION as a barrister or solicitor50 : 00

If under hand only15 : 00

If under seal3 : 00

See section 30

ALLOTMENT. *See* Letter of Allotment

ANNUITY, conveyance in consideration of. *See* Conveyance on Sale, and section 54.

Purchase of. *See* Conveyance on Sale, and section 60.

Creation of, by way of security. *See* Mortgage, and section 81.

Instruments relating to, upon any other occasion, *See* Bond, Covenant, or Instrument of any kind whatsoever.

APPOINTMENT of a new trustee, and APPOINTMENT in execution of a power of any property, or of any use, share, or interest in any property, by any instrument not being a will.....1 : 50

See section 65

APPOINTMENT of commissioner for taking affidavits and declarations under any Act or Law and of a justice of the peace under the provisions of any Act or Law relating to magistrates' courts9 : 00

[Substituted by L.N. 47 of 1955.]

APPRAISEMENT or VALUATION of any property, or of any interest therein, or of the annual value thereof, or of any dilapidations, or of any repairs wanted, or of the materials and labour used or to be used in any building, or of any artificers' work whatsoever.

Where the amount of the appraisal or valuation:

- does not exceed ₦200, for every ₦50 or fractional part thereof.....39 : 00

-exceeds ₦200, for every ₦200 or fractional part thereof.....3 : 00

Exemptions:

- (1) Appraisalment or valuation made for, and for the information of, one party only, and not being in any manner obligatory as between parties either by agreement or operation of any law of Nigeria.
- (2) Appraisalment or valuation made in pursuance of the order of a court in the exercise of its Admiralty jurisdiction.

[Amended by L.N. 47 of 1955.]

- (3) Appraisalment or valuation of property of a deceased person made for the information of an executor or other person required to deliver an affidavit of the estate of such deceased person.
- (4) Appraisalment or valuation of any property of a deceased person made for the purpose of ascertaining any duty payable thereon.
- (5) Appraisalment or valuation made by or on behalf of a local authority and in connection with the raising of the revenues of a local authority.

APPRENTICESHIP, instrument of. 39
See section 33

ASSIGNMENT

By way of security, or of any security. *See Mortgage.*

Upon a sale, or otherwise. *See Conveyance.*

ASSURANCE. *See Policy.*

ATTORNEY, LETTER or POWER of. *See Letter of Attorney.*

WARRANT of. *See Warrant of Attorney.*

AWARD.

① Where the amount or value of the matter in dispute does not exceed ₦200, for every ₦50 or fractional part of ₦50 thereof.....39

② Where the amount or value exceeds ₦200, for every ₦200 or fractional part of ₦200 thereof3 : 00

BILL OF EXCHANGE

BILL OF EXCHANGE payable on demand or at sight or on presentation or within three days after date or sight02

BILL OF EXCHANGE of any other kind whatsoever (except a bank note) and PROMISSORY NOTE of any kind whatsoever (except a bank note) drawn, or expressed to be payable, or actually

paid, or endorsed, or in any manner negotiated in Nigeria.

Where the amount or value of the money for which the bill or note is drawn or made does not exceeds ₦20.....	02
exceeds ₦20 but does not exceed ₦50.....	05
exceeds ₦50 but does not exceed ₦100	10
exceeds ₦100 but does not exceed ₦150	15
exceed ₦150 but does not exceed ₦200.....	20
exceeds ₦200, for every ₦50 and also for any fractional part of ₦50 of such amount or value	05

BILL OF EXCHANGE of any other kind whatsoever (except a bank note) drawn and expressed to be payable out of Nigeria when paid, or endorsed, or in any manner negotiated in Nigeria. Where the amount or value of the money for which the bill or note is drawn or made does not exceeds ₦20.....	02
exceeds ₦20 but does not exceed ₦50	05
exceeds ₦50 but does not exceed ₦200	20
exceeds N200, for every ₦50 and also for any fractional part of ₦50 of such amount or value.....	05

Exemptions:

- (1) Letter of credit granted in Nigeria authorising drafts to be drawn in Nigeria for payment out of Nigeria.
- (2) Bill or note issued by the Central Bank of Nigeria.
- (3) Letter written by a firm carrying on the business of banking in Nigeria to any other such person directing the payment of any sum of money, the same not being payable to bearer or to order, and such letter not being sent or delivered to the person to whom payment is to be made or to any person on his behalf.
- (4) Coupon or warrant for interest attached to and issued with any security, or with an agreement or memorandum for the renewal or extension of time for payment of a security, or issued in a sheet, either with the security or subsequently.

See sections 36-38 and 40-43

- (5) An order for the payment of money weekly, monthly or at any other stated periods to the Nigerian Red Cross Society.

[(5) added by 2 of 1945.]

BILL OF LADING of or for any goods, merchandise, or effect to be exported.....	09
--	----

See section 44

Exemptions:

The master's copy.

BILL OF SALE.

Absolute. *See* Conveyance on sale.

By way of security. *See* Mortgage. *See* section 45.

BONDS.

BOND for securing the payment or repayment of money or the transfer or re-transfer of stock. *See* Mortgage, and Marketable Security.

BOND in relation to any annuity upon the original creation and sale thereof. *See* Conveyance on Sale and section 60.

BOND, COVENANT, OR INSTRUMENT of any kind whatsoever.

- (1) Being the only or principal or primary security for any annuity (except upon the original creation thereof by way of sale or security, and except a superannuation annuity), or for any sum or sums of money at stated periods, not being interest for any principal sum secured by a duly stamped instrument, nor rent reserved by a lease.

For a definite and certain period so that the total amount to be ultimately payable can be ascertained. {The same *ad valorem* duty as mortgage or a bond for such total amount.

For the time of life or any other indefinite period

For every ₦10 and also for any fractional part ₦10 of the annuity or sum periodically payable
.....75

- (2) Being a collateral or auxiliary or additional or substituted security for any of the above mentioned purposes where the principal or primary instrument is duly stamped.

Where the total amount to be ultimately payable can be ascertained {The same *ad valorem* duty as mortgage or bond of the same kind for such total amount.

In any other case-

For every ₦10, and also for any fractional part of ₦10, of the annuity or sum periodically payable
.....
15

- (3) Being a grant or contract for payment of a superannuation annuity, that is to say a deferred life annuity granted or secured to any person in consideration of annual premiums payable until he attains a specified age and so as to commence on his attaining that age.

For every ₦10 and also for any fractional part of ₦10 of the annuity.

.....
15

BOND given pursuant to the directions of any Act or of a commissioner, or of the Accountant-General, or any of their officers, for or in respect of any of the duties or revenue of Nigeria or for preventing frauds or evasions thereof, or for any other matter or thing relating thereto.

Where the penalty of the bond does not exceed ₦200. 75

In any other case.....1: 50

[Substituted by Resolution and Order 1 of 1951.]

Exemptions:

BOND given as aforesaid upon, or in relation to, the receiving, or obtaining, or for entitling any person, to receive or obtain, any drawback of any duty or revenue for or in respect of any goods, wares or merchandise exported from Nigeria and bonds given in respect of the removal transshipment, exportation or shipment as stores of any goods.

BOND on obtaining letters of administration or on the sealing of a probate or letters of administration under the Probates (Re-sealing) Act

.....
75

[Cap. P31.]

Exemptions:

BOND given by any person where the estate to be administered does not exceed ₦200 in value.

BOND of any kind whatsoever not specifically charged with any duty.

Where the amount limited to be recoverable does not exceed ₦600. {The same *ad valorem* duty as a mortgage or bond for the amount limited.

In any other case3: 00

BOND accompanied with a deposit of title deeds, for making a mortgage or other security on any estate or property therein comprised. *See* Mortgage and section 80.

BOND, DECLARATION, or other DEED or WRITING for making redeemable any disposition apparently absolute, but intended only as a security. *See* Mortgage, and sections 29 and 80.

CAPITAL DUTY.

On the nominal share capital or any increase thereof-

₦

k

Limited liability companies registered under the Companies and Allied Matters Act, and corporations or companies with limited liability otherwise than under the Companies and Allied Matters Act-

For every ₦200, and also for any fractional part of ₦200 of such nominal share capital.....1: 50

See section 100, 101, 104 and 105

On loan capital-

For every ₦200, and also for any fractional part of ₦200 of the amount proposed to be secured39

See sections 102-105

CERTIFICATE from the Minister or other officer to the effect that there is no consular representative of any particular country or nation mentioned in the certificate.....1: 50

CERTIFICATE from a commissioner-

For denoting under section 15, or that the full and proper duty has been paid upon the original of any document under section 66.....39

That an instrument is not chargeable with duty, or that it is duly stamped or the amount of duty with which it is chargeable in pursuance of sections 16, 104 or 105.75

Exemptions:

Any certificates relating to any instruments the subject of general exemption (3) or (4) [Added by No. 28 of 1941.]

See section 58

CHARTER-PARTY, or any agreement for or relating to the freight or conveyance of any goods or effects on board a ship..... 0

9

CHEQUE, *See* Bill of Exchange.

CONTRACT. *See* Agreement.

CONTRACT NOTES.

CONTRACT NOTE for or relating to the sale or purchase of any stock or marketable security-

₦ k

Where the value of the stock or marketable security is less than ₦10.

03

Where the value of the stock or marketable security is ₦10 and does not exceed ₦20.....16

exceeds ₦200, for every ₦200 or part thereof16

See sections 49, 50, 51

CONTINUATION NOTES. *See section 49(2).*

OPTION NOTES. *See section 51(I).*

CONTRACT NOTE following a duly stamped Option Note.

See section 51(2)

CONVEYANCE OR TRANSFER ON SALE, of any property.

For every ₦50, and also for every fractional part of ₦50, of the amount or value of the consideration for the sale75

See sections 52-64

CONVEYANCE or Transfer by way of security of any property or of any security. *See Mortgage and sections 2 and 76-78.*

CONVEYANCE or Transfers operating as voluntary dispositions *inter vivos*. *See section 23 and 63.*

CONVEYANCE or Transfer of any kind not hereinbefore described.....3: 00

See section 65

COUNTERPART. *See Duplicate.*

COVENANT for securing the payment or repayment of money, or the transfer or retransfer of stock. *See Mortgage.*

COVENANT in relation to any annuity upon the original creation and sale thereof. *See Conveyance on Sale, and section 60.*

COVENANT in relation to any annuity (except upon the original creation and sale thereof) or to other periodical payments. *See Bond, Covenant.*

COVENANT. Any separate deed of covenant (not being an instrument chargeable with *ad valorem* duty as a conveyance on sale or mortgage) made on the sale or mortgage of any property, and relating solely to the conveyance or enjoyment of, or the title to, the property sold or mortgaged, or to the production of the muniments of title relating thereto, or to all or any of the matters aforesaid-

Where the *ad valorem* duty in respect of the consideration or mortgage money does not exceed ₦2 {A duty equal to the amount of such *ad valorem* duty

In any other case3: 00

DEBENTURE for securing the payment or repayment of money or the transfer or retransfer of stock. *See* Mortgage, and Marketable Security.

DECLARATION of any use of trust of or concerning any property by any writing, not being a will, or an instrument chargeable with *ad valorem* duty as a settlement.....3: 00

DECLARATION (Statutory). *See* Affidavit.

DEED of any kind whatsoever, not described in this Schedule.....3: 00

DEFEASANCE. Instrument of defeasance of any conveyance, transfer apparently absolute but intended only as a security for money or stock. *See* Mortgage and section 80.

In respect of Marketable Securities under hand only, *see* Agreement and section 29.

DEMISE. *See* Lease.

DEPOSIT of title deeds. *See* Mortgage and section 80.

DRAFT for money. *See* Bill of Exchange.

DUPLICATE OR COUNTERPART of any instrument chargeable with any duty-

Where such duty does not amount to 75k {The same duty as the original instrument

In any other

case.....

3: 00

[Amended by 28 of 1941.]

FIDELITY BOND. Where the amount limited to be recoverable does not exceed ₦600 {The same *ad valorem* duty as a bond for the amount limited

In any other case3: 00

FURTHER CHARGE OF FURTHER SECURITY, *See* Mortgage and section 80.

GUARANTEE. Other than a Fidelity Bond, *see* Agreement and Bond.

HIRE PURCHASE AGREEMENT. *See* Agreement, Hire Purchase and section 30.

INSURANCE. *See* Policy.

LEASE.

(1) For any definite term less than a year-

- (a) where the rent does not exceed the rate of ₦50 a year.09
- (b) where the rent exceeds the rate of ₦50 a year.39

(2) For any other definite term or for any indefinite terms-

- (a) for every ₦50 and also for every fractional part of ₦50 of the rent for the year.
 - (i) If the term is definite and does not exceed seven years..... 39
 - exceeds seven years and does not exceed twenty-one years.....1: 50
 - exceeds twenty-one years.....3: 00
 - (ii) if the term is indefinite.....3: 00
 - (iii) where the consideration, or any part of the consideration, moving either to the lessor or to any other person, consists of any money, stock or security:

in respect of such consideration {The same duty as a conveyance on a sale for the same consideration

(3) Of any other kind whatsoever not hereinbefore described.....3: 00

(4) A lease by the Government of State lands shall be assessed as if there was no revision clause and the initial rent was the rent payable throughout the term.

See also sections 68-71

LETTER OF ALLOTMENT and LETTER OF RENUNCIATION, or any other document having the effect of a letter of allotment-

- (1) Of any share or any fractional part thereof of any company or proposed company.
- (2) In respect of any loan raised or proposed to be raised, by any company or proposed company, or by any municipal body or corporation.
- (3) Issued or delivered in Nigeria, of any share or any fractional part thereof of any imperial, foreign or colonial company or proposed company.

If the amount allotted or to which the letter of renunciation relates-

₦ k

is less than ₦10. 03

is ₦10 or over.
.....

16

AND SCRIP CERTIFICATE, SCRIP, or other document-

(1) entitling any person to become the proprietor of any share or any fractional part thereof of any company or proposed company.03

(2) issued or delivered in Nigeria, and entitling any person to become the proprietor of any share or any fractional part thereof of any foreign or Common wealth company or proposed company..... 03

(3) denoting, or intended to denote, the right of any person as a subscriber in respect of any loan raised or proposed to be raised by any company or proposed company, or by any municipal body or corporation..... 03

See sections 72 and 73

LETTER OF CREDIT, *see* Bill of Exchange.

LETTER or POWER OF ATTORNEY, and COMMISSION, FACTORY, MANDATE, or other instrument in the nature thereof-

(1) For the sole purpose of appointing or authorising a proxy to vote at any one meeting at which votes may be given by proxy, whether the number of persons named in such instrument be one or more03

(2) By any petty officer, seaman, marine, or soldier, serving as a marine, or his representatives, for receiving prize money or wages..... 30

(3) For the receipt or the dividends or interest of any

stock Where made for the receipt of one payment only

In any other case1: 50

(4) For the receipt of any sum of money. or any bill of exchange or promissory note for any sum of money, not exceeding N40, or any periodical payments not exceeding the annual sum of ₦20 (not being hereinbefore charged) 1: 50

(5) Of any kind whatsoever not hereinbefore described3: 00

Exemptions:

- (1) Letter or power of attorney for the receipt of dividends of any definite and certain share of the Government or funds producing a yearly dividend less than ₦6.
- (2) Letter or power of attorney or proxy filed in a High Court in Connection with PROBATE jurisdiction of the Court.

[Amended by L.N. 47 of 1955.]

- (3) Order, request, or direction under hand only from the proprietor of any stock to any company or to any officer of any company or to any banker to pay the dividends or interest arising from the stock to any person therein named.
- (4) Letter or power of attorney for the sale, transfer or acceptance of any of the Government stocks or funds.
- (5) Power of attorney given exclusively for the purpose authorising the receipt of money payable on the redemption of Government stock.
- (6) Power of attorney or authority given to any person to receive from the Treasury any monies payable to any person in the service of the Government.

See sections 74 and 75

- (a) Letter of Hypothecation. 39
- (b) Letter of Trust. 39

[Inserted by Resolution and Order 4 of 1939.]

LICENCE to act temporarily as a Solicitor, and on every renewal of such licence.....10: 50

LICENCE coupled with a grant. *See* section 64.

LICENCE under the Piers Act..... 75

MARKETABLE SECURITY

- (1) Marketable Security being a security not transferable by delivery-

For or in respect of the money thereby secured { The same *ad valorem* duty to the nature of the security as upon a mortgage

- (2) Marketable Security being a security transferable by delivery-

For every ₦20, and also for any fractional part of ₦20 of the money thereby secured.

.....4
5

(3) Marketable Security being such security as last aforesaid given in substitution for a like security duly stamped in conformity with the law in force when it became subject to duty-

For every ₦40, and also for any fractional part of ₦40 of the money thereby secured.0
9

(4) Transfer, Assignment or Disposition of a marketable security of any description-

Upon a sale thereof. *See* Conveyance or Transfer on Sale.

Upon a mortgage thereof. *See* Mortgage of Stock or Marketable Security.

In other case than a sale or Mortgage.....1: 50
See sections 2 and 76-78

[Amended by 28 of 1941 and 17 of 1942.]

MORTGAGE, BOND, DEBENTURE, COVENANT (except a marketable security, otherwise specially charged with duty), and WARRANT OF ATTORNEY to confess and enter up judgment.

(1) Being the only or principal or primary security (other than an Equitable mortgage) for the payment or repayment or money, for every ₦200, and also for every fractional part of ₦200, of the amount secured 75

(2) Being a collateral, or auxiliary, or additional or substituted security, or by way of further assurance for the above-mentioned purpose, where the principal or primary security is duly stamped: for every ₦200, and also for every fractional part of ₦200, of the amount secured. 15

(3) Being an equitable mortgage, for every ₦200, and also for every fractional part of ₦200 of the amount secured.30

(4) TRANSFER, ASSIGNMENT or DISPOSITION of any mortgage, bond, debenture, or covenant (except a marketable security) or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment-

For every ₦200, and also for any fractional part of ₦200 of the amount transferred, assigned, or disposed, exclusive of interest which is not in arrear.15

And also when any further money is added to the money already secured. {The same duty as a Principal security for such further money

(5) RECONVEYANCE, RELEASE, DISCHARGE, SURRENDER, RESURRENDER, WARRANT TO VACATE, or RENUNCIATION of any such security as aforesaid, or of the benefit thereof, or of the money thereby secured

For every ₦200, and also for any fractional part of ₦200, of the total amount or value of the

money at any time secured.....	15
<i>See sections 80-82</i>	
MORTGAGE OF STOCK or Marketable Security-	
Under hand only. <i>See</i> Agreement and section 29.	
By deed. <i>See</i> Mortgage, and section 80.	
MUTUAL DISPOSITION. <i>See</i> Exchange.	
NOTARIAL ACT of any kind whatsoever (except a protest of a bill of exchange or promissory note)	1
5	
<i>See</i> Protest and section 83	
NOTARY PUBLIC, on being sworn	5: 00
ORDER for the payment of money. <i>See</i> Bill of Exchange.	
PARTITION or DIVISION, Instruments effecting-	
In the case specified in section 67. <i>See</i> that section	
In any other case.....	3: 00
POLICY OF INSURANCE-	
Policy of Life Insurance-	
Where the sum insured does not exceed ₦1,000; for every ₦100, and also for any fractional part of ₦100, of the amount insured.	09
Exceeds ₦1,000 but does not exceed ₦2,000; for every ₦200 and also for any fractional part of ₦200, of the amount insured.	15
Exceeds ₦2,000, for every ₦2,000 and also for any fractional part of ₦2,000, of the amount insured.....	1: 50
<i>See sections 84, 87 and 88</i>	
Policy of Marine Insurance. <i>See</i> sections 84-87.	
.....	
05	
Policy of Insurance against Accident and Policy of Insurance for any payment agreed to be made during the sickness of any person, or his incapacity or damage of or to any property.	

09

See section 84-87

[1961 No. 55.]

Policy of Insurance of any kind not hereinbefore specifically mentioned:

Provided that cover notes, slips, or other instruments made in the anticipation of the issue of a formal policy of marine insurance shall not be taken for the purposes of this subhead to be policies of insurance.

The same *ad valorem* duty as is payable under the heading "Policy of Life Insurance" in this Schedule.

Exemption:

Policies of Insurance on baggage or personal or household effects only, if made or executed out of Nigeria.

POWER OF ATTORNEY. *See* Letter of Attorney.

PROCURATION, deed or other instrument of.....1: 50

PROTEST of any bill of exchange or promissory notes:

Where the duty on the bill or note does not exceed 10K. {The same duty as the bill or note

In any other case 15

See section 83

PROMISSORY NOTE. *See* Bill of Exchange.

[Amended by 28 of 1941.]

RECEIPT given for or upon the payment of money amounting to ₦4 or upwards.
.....0

2

Exemptions:

- (1) Receipt given by any person or his representative for or on account of any salary, pay or wages or for or on account of any other like payment made to or for the account or benefit of any person being the holder of any office or an employee, in respect of his office or employment, or for or on account of money paid in respect of any pension, superannuation allowance, compassionate allowance or other like allowance.

- (2) Receipt endorsed or otherwise written upon or contained in any instrument liable to stamp duty and duly stamped, acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest or annuity thereby secured or therein mentioned.
- (3) Acknowledgment by any banker of the receipt of any bill of exchange or promissory note for the purpose of being presented for acceptance or payment.
- (4) Receipt given for money deposited in any bank, or with any banker, to be accounted for and expressed to be received of the person to whom the same is to be accounted for, or for money withdrawn from a savings bank account.
- (5) Receipt given by the payee of a money order.
- (6) Receipt given for or upon the payment of any Government duties or taxes or of money to or for the use of the Government.
- (7) The duplicate of any receipt required by Government to be given in duplicate, the original receipt being duly stamped.
- (8) Receipt given by an officer of a public department of the Government of Nigeria or a State for money paid by way of imprest or advance, or in adjustment of account, where he derives no personal benefit therefrom, or for the refund of out-of-pocket expenses due from Government.

[Amended by Ordinance 2 of 1953.]

- (9) Receipt given for drawback or bounty upon the exportation of any goods or merchandise.
- (10) Receipt given for the return of any duties of customs upon certificates of over-entry, or upon reimportation certificates.
- (11) Receipt given for the refund of any sums deposited with the Treasury under the provisions of the Minerals Act.
- (12) Receipt given for the return of any monies over-collected by Government.
- (13) Receipt given by a prisoner on discharge, for money placed on deposit in the Treasury, or otherwise retained, during the term of his imprisonment.
- (14) Receipt given by an accused person for money or other property taken from him on his arrest.
- (15) Receipt given for money given or subscribed to the Nigerian Red Cross Society.
[(15) added by 2 of 1945.]
- (16) Receipts given by any person in a Regulated Securities Lending Transaction carried out under regulation issued by Securities and Exchange Commission
[2019 No. 1, s. 56.]

See sections 89-92

RECONVEYANCE, RELEASE or RENUNCIATION of any security. See Mortgage.

RELEASE OR RENUNCIATION of any property, or of any right or interest in any property:

Upon a sale. See Conveyance on Sale.

By way of security. See Mortgage.

In any other case3: 00

RENUNCIATION. See Reconveyance and Release.

RENUNCIATION, LETTER OF. See Letter of Allotment.

REVOCATION of any use or trust of any property by any writing, not being a will..... 1: 50

SCRIP CERTIFICATE or SCRIP. See Letter of Allotment.

SETTLEMENT. Any instrument whether, voluntary or upon any good or valuable consideration other than a *bona fide* pecuniary consideration whereby any definite and certain principal sum of money (whether charged or chargeable on land or other hereditaments or not, or to be laid out in the purchase of lands or other hereditaments or not) or any definite and certain amount of stock, or any security is settled or agreed to be settled in any manner whatsoever-

For every ₦200, and also for any fractional part of ₦200 of the amount or value of the property settled or agreed to be settled.75

Exemption:

Instrument of appointment relating to any property in favour of persons specially named or described as the object of a power of appointment, where duty has been duly paid in respect of the same property upon the settlement creating the power or the grant of representation of any will or testamentary instrument creating the power. See sections 93-95.

SHARE WARRANT OR STOCK CERTIFICATE BEARER-

- (i) Issued under the provisions of the Companies and Allied Matters Act or any instrument to bearer issued by or on behalf of any company or body of persons formed or established in Nigeria and having a like effect as a share warrant and stock certificate to bearer. {A duty of an amount equal to three times the amount of the *ad valorem* duty which would be chargeable on deed transferring the share or shares specified in warrant or certificate if the consideration for the transfer were the normal value of such share or shares or stock.
- (ii) Issued by any company or body of persons formed or established out of Nigeria, for

every ₦20 or fraction thereof of the nominal value of the share or stock to which the warrant or certificate relates.16

See sections 77, 96, 97 and 98
[Substituted by 28 of 1941.]

SUPERANNUATION ANNUITY. *See* Bond, Covenant.

SURRENDER-

Of any kind whatsoever not chargeable with duty as a conveyance on sale or a mortgage and not being a surrender of a certificate of occupancy under the Land Use Act, or of a mining lease or water right under the Minerals and Mining Act.....1: 50

[Cap. L5. Cap. MI2.]

[Amended by 17 of 1942.]

TRANSFER. *See* conveyance or Transfer.

VOTING PAPER. Any instrument for the purpose of voting by any person entitled to vote at any meeting of anybody exercising a public trust, or of the shareholders, or members, or contributors to the funds of any company, society or institution03

See section 74

WARRANT OF ATTORNEY to confess and enter up a judgment given as a security for the payment or repayment of money, or for the transfer or re-transfer of stock. *See* Mortgage.

WARRANT OF ATTORNEY of any other kind.....3: 00

WARRANT FOR GOODS..... 09

Exemptions:

- (1) Any document or writing given by an inland carrier acknowledging the receipt of goods conveyed by such carrier.
- (2) A weight note issued together with a duly stamped warrant, and relating solely to the same goods, wares, or merchandise.

See section 99

GENERAL EXEMPTIONS FROM ALL STAMP DUTIES:

- (1) Transfer of shares in the Government or legislative stocks or funds of Nigeria.
- (2) Instruments for the sale, transfer or other disposition, either absolutely, or by way of mortgage, of otherwise, of any ship or vessel or any part, interest, share or property of or in any ship or vessel.
- (3) All instruments on which the duty would be payable by Government.

- (4) All instruments on which the duty would be payable locally by Government in Nigeria or any of the departments thereof.

[Inserted as (3A) by 28 of 1941.]

- (5) Agreements made with the Nigerian Railway Corporation relating to the receipt and carriage of passengers, goods or animals.
- (6) Indemnity bonds given to the Nigerian Railway Corporation by consignees (when the railway receipt is not produced) in respect of the delivery of consignments of fresh fish, fruit and vegetables, and other perishable articles.
- (7) An instrument of apprenticeship to which the Government is a party.
- (8) Bond given by public officer for the execution of his duties.
- (9) All instruments in which the duty would be payable by any consular officer arising out of his official functions where the foreign government he represents grants the like exemption to Nigerian consular officers.

[38 of 1950.]

- (10) Instruments relating to the alienation of land or any interest therein which are approved by local authorities of the Southern States of Nigeria in accordance with rules made by them under the Local Government Laws.

[Resolution 6 of 1951.]

- (11) All instruments relating to the alienation of land or any interest therein which are approved by any local government council under any by-law made under either the Eastern States Local Government Laws or the Western States Local Government Laws, 1953.

[L.N. 64 of 1954.16 of 1950.1 of 1953.]

- (12) All instruments regarding which the Government of the Federation is competent to make laws executed by or on behalf of any co-operative society registered under any Act or law or by any officer or member of such a society relating to the business of such society.

[L.N. 90 of 1956.]

- (13) All documents relating to the transfer of stocks and shares.

- (14) Shares, stocks or securities transferred by a lender to its approved agent or a borrower in furtherance of a Regulated Securities Lending Transaction.

[2019 No. 1, s. 56]

- (15) Shares, stocks or securities returned to a lender or its approved agent by a borrower in pursuant to a Regulated Securities Lending Transaction.

[2019 No. 1, s. 56]

- (16) All documents relating to a regulated securities lending transaction carried out under regulations issued by the Securities and Exchange Commission.

[2019 No. 1, s. 56]

CHAPTER T2

TAXES AND LEVIES (APPROVED LIST FOR COLLECTION) ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Responsibility for collecting certain taxes and levies, etc.
2. Assessment and collection of taxes
3. Offences
4. Interpretation
5. Citation

CHAPTER T2

TAXES AND LEVIES (APPROVED LIST FOR COLLECTION) ACT

[1998 No. 21]

[Commencement]

[30th September, 1998]

1. Responsibility for collecting certain taxes, and levies, etc.

- (1) Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979, as amended, or in any other enactment or law, the Federal Government, State Government and local government shall be responsible for collecting the taxes and levies listed in Part I, Part II and Part III of the Schedule to this Act, respectively.
- (2) The Minister of Finance may, on the advice of the Joint Tax Board and by Order published in the Gazette, amend the Schedule to this Act.

2. Assessment and collection of taxes

- (1) Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979, as amended, or in any other enactment or law, no person, other than the appropriate tax authority, shall assess or collect, on behalf of the Government any tax or levy listed in the Schedule to this Act, and members of the Nigeria Police Force shall only be used in accordance with the provisions of the tax laws.
- (2) No person, including a tax authority, shall mount a roadblock in any part of the Federation for the purpose of collecting any tax or levy

3. Offences

A person who-

- (a) collects or levies any tax or levy; or
- (b) mounts a roadblock or causes a road block to be mounted for the purpose of collecting any tax or levy,

in contravention of section 2 of this Act, is guilty of an offence and liable on conviction to a fine of ₦50,000 or imprisonment for three years or to both such fine and imprisonment.

4. Interpretation

In this Act, unless the context otherwise requires-

“**Government**” means the Federal, State or local government;

“**Joint Tax Board**” means the Joint Tax Board established under the provisions of the Personal Income Tax Act 1993;

[1993 No. 104]

“levy” includes any fee and charge;

“tax authority” means-

- (a) the Federal Board of Inland Revenue, the State Board of Internal Revenue or the Local Government Revenue Committee; or
- (b) a Ministry, Government department or any other Government body charged with responsibility for assessing or collecting the particular tax.

5. Citation

This Act may be cited as the Taxes and Levies (Approved List for Collection) Act.

SCHEDULE

[Section 1]

PART I

Taxes to be collected by the Federal Government

1. Companies income tax
2. Withholding tax on companies, residents of the Federal Capital Territory, Abuja and non-resident individuals
3. Petroleum profits tax
4. Value added tax
5. Education tax
6. Capital gains tax on residents of the Federal Capital Territory, Abuja, bodies corporate and non-resident individual
7. Stamp duties on bodies corporate and residents of the Federal Capital Territory, Abuja
8. Personal income tax in respect of-
 - (a) members of the armed forces of the Federation;
 - (b) members of the Nigeria Police Force;
 - (c) Residents of the Federal Capital Territory, Abuja; and

- (d) staff of the Ministry of Foreign Affairs and non-resident individuals.

PART II

Taxes and levies to be collected by the State Government

1. Personal income tax in respect of-
 - (a) Pay-As- You-Earn (PAYE); and
 - (b) direct taxation (self-assessment)
2. Withholding tax (individuals only)
3. Capital gains tax (individuals only)
4. Stamp duties on instruments executed by individuals
5. Pools betting and lotteries, gaming and casino taxes
6. Road taxes
7. Business premises registration fee in respect of-
 - (a) urban areas as defined by each State, maximum of-
 - (i) ₦10,000 for registration; and
 - (ii) ₦5,000 per annum for renewal of registration; and
 - (b) rural areas-
 - (i) ₦2,000 for registration; and
 - (ii) ₦1,000 per annum for renewal of registration
8. Development levy (individuals only) not more than ₦100 per annum will on all taxable individuals
9. Naming of street registration fees in the State Capital
10. Right of Occupancy fees on lands owned by the State Government in urban areas of the State
11. Market taxes and levies where State finance is involved

PART III

Taxes and levies to be collected by the local government

1. Shops and kiosks rates
2. Tenement rates
3. On and off liquor license fees
4. Slaughter slab fees
5. Marriage, birth and death registration fees
6. Naming of street registration fee, excluding any street in the State Capital
7. Right of Occupancy fees on lands in rural areas, excluding those collectable by the Federal and State Governments
8. Market taxes and levies excluding any market where State finance is involved
9. Motor park levies
10. Domestic animal license fees
11. Bicycle, truck, canoe, wheelbarrow and cart fees, other than a mechanically propelled truck
12. Cattle tax payable by cattle farmers only
13. Merriment and road closure levy
14. Radio and television licence fees (other than radio and television transmitter)
15. Vehicle radio licence fees (to be imposed by the local government of the State in which the car is registered)
16. Wrong parking charges
17. Public convenience, sewage and refuse disposal fees
18. Customary burial ground permit fees
19. Religious places establishment permit fees
20. Signboard and advertisement permit fees

TERTIARY EDUCATION TRUST FUND (ESTABLISHMENT, ETC) ACT, 2011

Explanatory Memorandum

This Act repeals the Education Tax Act Cap. E4, Laws of the Federation of Nigeria, 2004 and Education Tax Fund Act No. 17, 2003 and establishes the Tertiary Education Trust Fund charged with the responsibility for imposing, managing and disbursing the tax to public tertiary institutions in Nigeria.

TERTIARY EDUCATION TRUST FUND (ESTABLISHMENT, ETC) ACT, 2011

ARRANGEMENT OF SECTIONS

SECTION:

1. Imposition of tertiary education tax.
2. Assessment and collection of tax.
3. Establishment of the Tertiary Education Trust Fund.
4. Establishment of the Board of Trustees.
5. Cessation of membership.
6. Functions of the Board of Trustees.
7. Management and administration of the Fund.
8. Appointment of the Executive Secretary and other staff of the Fund.
9. Pension.
10.
11. Penalties.
12. Jurisdiction.
13. Limitation of suits against the Fund, etc.
14. Service of documents.
15. Restriction on execution against property of the Fund.

16. Indemnity of officers.

17. Regulations.

18. Repeal.

19. Savings.

20. Interpretation.

21. Citation.

Schedule

TERTIARY EDUCATION TRUST FUND (ESTABLISHMENT, ETC) ACT, 2011

An Act to repeal the Education Tax Act Cap. E4 Laws of the Federation of Nigeria, 2004 and Education Tax Fund (Amendment) Act No. 17, 2003 and establish the Tertiary Education Trust Fund charged with the responsibility for imposing, managing and disbursing The Education Tax to public tertiary education institutions in Nigeria; and for related matters.

1.

- (1) As from the commencement of this Act, there shall be charged and payable an annual tertiary education tax which shall be assessed, collected and administered in accordance with the provisions of this Act.
- (2) The tax, at the rate of 3%, shall be charged on the assessable profit of a company registered in Nigeria, other than a small company as defined under the Companies Income Tax Act.
[2021 No.1, s.28; 2023 No.1, s. 26]
- (3) The assessable profit of a company shall be ascertained in the manner specified in the Companies Income Tax Act or the Petroleum Profits Tax Act (in this Act referred to as "the Act") as the case may be.
- (4) Without prejudice to the provision of subsection (3) of this section, section 60 of the Petroleum Profit Tax Act shall not apply to the assessment, collection and payment of tertiary education tax and all companies chargeable to tax under the Petroleum Profit Tax Act shall be liable to pay the full extent of the tax imposed under this Act.

2.

- (1) The Federal Inland Revenue Service (in this Act referred to as "the Service") shall assess and collect from a company the tax imposed by this Act and accordingly-
 - (a) shall, when assessing a company, for companies income tax or petroleum profit tax for an accounting period of the company, also proceed to assess the company for the tax due under this Act; and
 - (b) the provisions of the Act relating to the collection of companies income tax or petroleum profit tax shall, subject to this Act, apply to the tax due under this Act.
- (2) The tax imposed by this Act shall be due and payable within 60 days after the Service has served notice of the assessment on a company.
- (3) The Service may, for the purpose of assessment and collecting the tax imposed by this Act, devise such forms as it may deem necessary.

3.

- (1) There is established the Tertiary Education Trust Fund (in this Act referred to as "the Fund") for the rehabilitation, restoration and consolidation of tertiary education in Nigeria which shall be managed by the Board of Trustees established under section 4 of this Act.

- (2) The Fund-
 - (a) shall be a body corporate with perpetual succession and a common seal; and
 - (b) may sue and be sued in its corporate name.
 - (3) The Service shall pay the tax collected under this Act into the Fund and shall, when doing so, submit to the Fund, in such form as the Board of Trustees shall approve, a return showing-
 - (a) the name of the company making the payment;
 - (b) the amount collected;
 - (c) the assessable profit of the company for the accounting period; and
 - (d) such other information as may be required by the Fund for the proper administration of the tax.
 - (4) The Fund shall, before disbursement of the amount in the Fund, set aside in each year, an amount not exceeding 5 per cent of the total monies accruing to the Fund in the preceding year which shall be applied-
 - (a) for the cost of administration and management of the Fund;
 - (b) for the maintenance of any property acquired by or vested in the Fund and generally to pay for services rendered to the Fund;
 - (c) for project monitoring;
 - (d) to meet all the needs of the Fund necessary for the due administration and implementation of the purpose of this Act.
- 4.
- (1) There is established for the Fund, a Board of Trustees (in this Act referred to as "the Board of Trustees") which shall consist of-
 - (a) a chairman who shall-
 - (i) be a person with good knowledge in finance and administrative matters;
 - (ii) have qualifications and experiences as are required to perform the functions of that office under this Act.
 - (b) 6 persons, each representing a geopolitical zone in the country;
 - (c) a representative each of the following Federal Ministries, who shall not be below the rank of a Director

- (i) Education; and
 - (ii) Finance;
 - (d) a representative each from the Universities, Polytechnics and Colleges of Education; and
 - (e) the Executive Secretary, who shall be the Secretary to the Board of Trustees.
- (2) The membership of the Board of Trustees shall reflect the six geo-political zones of the Federation.
- (3) The members Board of Trustees shall-
- (a) Be persons with considerable experience from both the public and private sectors to represent the business, financial and education sectors;
 - (b) be appointed by the President on the recommendation of the Minister;
 - (c) other than the ex-officio members, each hold office for a term of 4 years in the first instance and may be eligible for reappointment for a further term of 4 years and no more;
 - (d) be paid such remuneration and allowances as the President may, from time to time, determine.
- (4) The Board of Trustees shall meet for the conduct of its ordinary meetings 4 times in a calendar year.
- (5) Notwithstanding subsection (4) of this section, the Board of Trustees may meet to conduct such as other business as exigency demands.
- (6) The supplementary provisions contained in the Schedule to this Act shall have effect with respect to the proceedings of the Board of Trustees and other matters contained therein.

5.

- (1) A member of the Board of Trustees shall cease to hold office if he-
- (a) becomes of unsound mind;
 - (b) becomes bankrupt or makes a compromise with his creditors;
 - (c) is convicted of a felony or any offence involving dishonesty; or
 - (d) is guilty of serious misconduct in relation to his duties.
- (2) A member of the Board of Trustees may be removed from office by the President if he is satisfied that it is not in the interest of the Fund or public that the member should continue in

that office.

- (3) A member of the Board of Trustees, other than an ex-officio, may resign his appointment by a notice in writing under his hand, addressed to the President.
- (4) Where a vacancy occurs in the membership of the Board of Trustees, it shall be filled by the appointment of a successor to hold office for the remainder of the term of office of his predecessor, so that the successor shall represent the same interest and shall be appointed by the President.

6. The Board of Trustees shall-

- (a) monitor and ensure collection of education tax by the Service and ensure transfer of same to the Fund;
- (b) manage and disburse the tax imposed by this Act;
- (c) liaise with the appropriate ministries or bodies responsible for collection or safe keeping of the tax;
- (d) receive requests and approve admissible projects after due consideration;
- (e) ensure disbursement of funds to various public tertiary educational institutions in Nigeria;
- (f) monitor and evaluate execution of the projects;
- (g) invest funds in appropriate and safe securities;
- (h) update the Federal Government on its activities and progress through annual and audited reports;
- (i) review progress and suggest improvement within the provisions of this Act;
- (j) do such other things as are necessary or incidental to the objects of the Fund under this Act or as may be assigned by the Federal Government;
- (k) make and issue guidelines, from time to time, to all beneficiaries on disbursement from the Fund on the use of monies received from the Fund; and
- (l) generally to regulate the administration, application and disbursement of monies from the Fund under this Act.

7.

- (1) The Board of Trustees shall administer the tax imposed by this Act and disburse the amount in the Fund to Federal and State tertiary educational institutions specifically for the provision or maintenance of-

- (a) essential physical infrastructure for teaching and learning;
 - (b) instructional material and equipment;
 - (c) research and publication;
 - (d) academic staff training and development; and
 - (e) any other need which, in the opinion of the Board of Trustees, is critical and essential for the improvement of quality and maintenance of standards in the higher educational institutions.
- (2) The Board of Trustees shall administer, manage and disburse the tax imposed by this Act on the basis of-
- (a) funding of all public tertiary educational institutions;
 - (b) equality among the 6 geo-political zones of the Federation in the case of special intervention; and
 - (c) equality among the States of the Federation in the case of regular intervention;
- (3) The distribution of funds shall be in the ratio of 2: 1: 1 as between Universities, Polytechnics and Colleges of Education.
- (4) The Board of Trustees shall have power to give due consideration to the peculiarities of each geopolitical zone in the disbursement and management of the tax imposed by this Act between the various levels of tertiary education.
- (5) The Minister shall, on the recommendation of the Board of Trustees and subject to approval by the President, make guidelines for disbursement of funds under this Act.

8.

- (1) There shall be for the Fund an Executive Secretary who shall-
- (a) be appointed by the President on the recommendation of the Minister;
 - (b) be the Chief Executive and Accounting Officer of the Fund;
 - (c) be a person with good knowledge and cognate academic and administrative experience in tertiary education;
 - (d) have qualifications and experience as are appropriate for a person required to perform the functions of that office under this Act; and
 - (e) hold office for a period of 5 years in the first instance and may be eligible for reappointment for a further term of 4 years only and on such terms and conditions as to emoluments, and conditions of service as may be specified in his letter of appointment.

(2) The Executive Secretary shall, subject to the general direction of the Board of Trustees, be responsible for-

- (a) the day-to-day administration of the Fund;
- (b) Keeping the books and proper records of the proceedings of the Board of Trustees;
- (c) the administration of the secretariat of the Board of Trustees; and
- (d) the general direction and control of all other employees of the Fund.

(3) The Board of Trustees shall have power to-

- (a) employ either directly or on transfer or secondment from any civil or public service in the Federation such number of employees as may, in the opinion of the Board, be required to assist the Board of Trustees and the Executive Secretary in the discharge of their functions under this Act; and
- (b) pay to persons so employed such remuneration (including allowances) as the Board of Trustees may, with the approval of the National Salaries, Incomes and Wages Commission, determine

9.

(1) Service in the Fund shall be approved service for purposes of pension.

(2) Employees of the Fund shall be entitled to pension, gratuity and other retirement benefits as are enjoyed by persons holding equivalent grades in the Civil Service of the Federation.

(3) Notwithstanding in subsection (1) or (2) of this section, nothing in this Act shall prevent the appointment of a person to any office on terms which preclude the grant of pension and gratuity in respect of that office.

(4) For the purpose of the application of the provisions of the Pension Reform Act, any power exercisable by a Minister or other authority of the Government of the Federation, other than the power to make regulations under section 23 thereof, is vested in and shall be exercisable by the Board of Trustees.

10. [Deleted by 2020 No. 1, s. 35]

11.

(1) Except as otherwise provided in this Act, a person guilty of an offence under this Act shall, on conviction, be liable-

- (a) for a first offence, to imprisonment for a term of 6 months or to a fine of up to ₦1,000,000.00 or both; and

- (b) for a second and subsequent offence to imprisonment for a term of 12 months or to a fine of up to ₦2,000,000.00 or both.
- (2) The institution of proceedings or imposition of a penalty under this Act shall not relieve a company from liability to pay to the Service a tax which is or may become due under this Act.
- (3) [Deleted by 2020 No. 1, s. 36].

12. The Federal High Court shall have jurisdiction to try offenders under this Act.

13.

- (1) Subject to the provisions of this Act, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against any officer or employee of the Fund.
- (2) Notwithstanding anything contained in any other law or enactment, no suit against any member of the Board of Trustees, the Executive Secretary or any other officer or employee of the Fund for any act done in pursuance or execution of the Act or any other law or enactment, or of any public duty or authority or in respect of any alleged neglect or default in the execution of this Act or such law or enactment, duty or authority, shall lie or be instituted in any court unless-
 - (a) it is commenced within 3 months next after the act, neglect or default complained of; or
 - (b) in the case of a continuation of damage or injury, within 6 months next after the ceasing thereof.
- (3) No suit shall be commenced against a member of the Board of Trustees, the Executive Secretary, officer or employee of the Fund before the expiration of a period of one month after written notice of intention to commence the suit shall have been served upon the Fund by the intending plaintiff or his agent.
- (4) The notice referred to in subsection (3) of this section shall clearly and explicitly state the cause of action, the particulars of the claim, the name and place of abode of the intending plaintiff and the relief which he claims.

14. A notice, summons or other document required or authorized to be served upon the Fund under the provisions of this Act or any other law or enactment may be served by delivering it to the Executive Secretary or by sending it by registered post and addressed to the Executive Secretary at the principal office of the Fund.

15.

- (1) In any action or suit against the Fund, no execution or attachment of process in the nature thereof shall be issued against the Fund.
- (2) Any sum of money which may, by the judgment of any court, be awarded against the Fund shall, subject to any direction given by the court where notice of appeal of the said judgment has been given, be paid from the general reserve fund of the Fund.

16.

A member of the Board of Trustees, the Executive Secretary, any officer or employee of the Fund shall be indemnified out of the assets of the Fund against any proceeding, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted, if any such proceeding is brought against him in his capacity as a member of the Board of Trustees, the Executive Secretary, officer or employee of the Fund.

17.

The Minister may, on the recommendation of the Board of Trustees and subject to the approval of the President, make regulations generally for the purposes of this Act and the due administration thereof.

18.

The Education Tax Act, CAP E4, Laws of the Federation of Nigeria, 2004 and the Education Tax Fund (Amendment) Act No. 17, 2003 are repealed.

19.

- (1) Without prejudice to section 6 of the Interpretation Act, the repeal of the enactment specified in section 18 of this Act shall not affect anything done under or pursuant to that enactment.
- (2) The rights, interests, obligations and liabilities of the Fund existing before the commencement of this Act under any contract or instrument, or in law or in equity, apart from any contract or instrument, shall, by virtue of this Act, be assigned to and vested in the Fund established by this Act.
- (3) Any such contract or instrument as is mentioned in subsection (2) of this section shall be of the same force and effect against or in favour of the Fund established by this Act and shall be enforceable as fully and effectively, as if the Fund established by this Act has been named therein or had been a party thereto.
- (4) The Fund established by this Act shall be subject to all the obligations and liabilities to which the Fund established under the repealed Acts was subject immediately before the commencement of this Act and all other persons shall have the same rights, powers and remedies against the Fund established by this Act, as they had against the Fund established under the repealed Act immediately before the commencement of this Act.
- (5) Any proceeding or cause of action pending or existing immediately before the commencement of this Act by or against the Fund established by the repealed Act in respect of any right, interest, obligation or liability of the former Fund may be continued or as the case may be, commenced and any determination of a court of law, tribunal or other authority or person may be enforced by or against the Fund established by this Act, to the same extent that such proceeding, cause of action or determination might have been continued, commenced or

enforced by or against the former Fund as if this Act had not been made.

- (6) All assets, funds, resources and other movable property which immediately before the commencement of this Act were vested in the former Fund shall, by virtue of this Act and without further assurance, be vested in the Fund established by this Act.
- (7) Persons who immediately before the coming into force of this Act were holders of offices in the repealed Education Trust Fund shall-
 - (a) continue in office;
 - (b) have their previous service in the repealed Education Trust Fund counted as service for the purposes of pension payable under the Pension Reform Act; and
 - (c) be deemed to have been appointed to the offices by the statutory body established by this Act.

20.

- (1) In this Act-

"Act" means the Companies Income Tax Act or the Petroleum Profits Tax Act, as the case may be;

"Board of Trustees" means the Board of Trustees established under section 4 of this Act;

"company" means a company registered in Nigeria;

"Fund" means the Tertiary Education Trust Fund established under section 3 of this Act;

"Minister" means the Minister charged with responsibility for matters relating to education;

"the Service" means the Federal Inland Revenue Service established under the Federal Inland Revenue Service (Establishment) Act, 2007;

"tertiary educational institution" means a University, a Polytechnic or a College of Education;

- (2) Where no provision is made in this Act for a matter relating to the assessment and collection of the tax imposed by this Act, the provisions of the Acts relating to the assessment and collection of companies income tax or petroleum profit tax, as the case may be, shall apply mutatis mutandis to that matter.

22. Citation

This Act may be cited as the Tertiary Education Trust Fund (Establishment, Etc.) Act, 2011.

SCHEDULE

Supplementary Provisions Relating to the Board of Trustees

Proceedings of the Board of Trustees

1.

- (1) Subject to this Act and section 27 of the Interpretation Act, the Board of Trustees may make standing orders regulating its proceedings or those of any of its committees.
- (2) The quorum of the Board of Trustees shall be 5 members and the quorum of any committee of the Board of Trustees shall be determined by the Board of Trustees.

2.

- (1) The Board of Trustees shall meet not less than 4 times in each year and subject thereto, the Board of Trustees shall meet whenever it is summoned by the Chairman, and if the Chairman is required to do so by notice given to him by not less than 3 other members, he shall summon a meeting of the Board of Trustees to be held within 14 days from the date on which the notice is given.
- (2) At any meeting of the Board of Trustees, the Chairman shall preside but if he is absent, the members present at the meeting shall appoint one of them to preside at that meeting.
- (3) Where the Board of Trustees desires to obtain the advice of any person on a particular matter, the Board of Trustees may co-opt him to the Board of Trustees for such period as it thinks fit; but a person who is in attendance by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the Board and shall not count towards a quorum.

Committees

3.

- (1) The Board of Trustees may appoint one or more committees to carry out, on behalf of the Board of Trustees, such of its functions as the Board of Trustees may determine.
- (2) A committee appointed under this paragraph shall consist of such number of persons (not necessarily members of the Board of Trustees) as may be determined by the Board of Trustees; and a person other than a member of the Board of Trustees shall hold office on the committee in accordance with the terms of his appointment.
- (3) A decision of a Committee of the Board of Trustees shall be of no effect until it is confirmed by the Board of Trustees.

Miscellaneous

4.

- (1) The fixing of the seal of the Fund shall be authenticated by the signature of the Chairman and any other person authorized generally or specially to act for that purpose by the Board of Trustees.
- (2) Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the Fund by the Executive Secretary or any person generally or specially authorized to act for that purpose by the Board of Trustees.
- (3) Any document purporting to be a document duly executed under the seal of the Fund shall be received in evidence and shall, unless and until the contrary is proved, be presumed to be so executed.

5.

The validity of any proceeding of the Board of Trustees or of a committee thereof shall not be adversely affected by any vacancy in the membership of the Board of Trustees or committee, or by any defect in the appointment of a member of the Board of Trustees or of a committee, or by reason that a person not entitled to do so took part in the proceedings of the Board of Trustees or committee.

CHAPTER VI

VALUE ADDED TAX ACT

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FIRST SCHEDULE

Goods and services exempt

CHAPTER VI

VALUE ADDED TAX ACT

An Act to impose and charge Value Added Tax on certain goods and services and to provide for the administration of the tax and matters related thereto.

[1993 No. 102, 2007 No. 53]

[Commencement]

[1st December, 1993]

PART I

1. Imposition, etc., of Value Added Tax

There is hereby imposed and charged a tax to be known as the Value Added Tax (in this Act referred to as “the tax”) which shall be administered in accordance with the provisions of this Act.

2. Taxable goods and services

(1) The tax shall be charged and payable on all supplies of goods and services in Nigeria other than those listed in the First Schedule to this Act.

[2020 No. 1, s. 40]

(2) For the purposes of this Act, goods and services consumed or otherwise utilised in Nigeria are supplied in Nigeria.

[2020 No. 1, s. 40]

(3) Notwithstanding the provisions of subsection (1), a taxable supply shall be deemed to take place in Nigeria if-

[2020 No. 1, s. 40]

(a) in respect of goods-

- (i) the goods are physically present in Nigeria at the time of supply, imported into Nigeria, assembled in Nigeria or installed in Nigeria, or
- (ii) the beneficial owner of the rights in or over the goods is a taxable person in Nigeria and the goods or right is situated, registered or exercisable in Nigeria;

(b) in respect of a service-

- (i) the service is rendered in Nigeria by a person physically present in Nigeria at the time of providing the service,
- (ii) the service is provided to and consumed by a person in Nigeria, regardless of whether the service is rendered within or outside Nigeria or whether or not the legal or

contractual obligation to render such service rests on person within or outside Nigeria, or

- (iii) the service is connected with existing immovable property (including the services of agents, experts, engineers, architects, valuers, etc.), where the property is located in Nigeria ; and

(c) in respect of an incorporeal-

- (i) the exploitation of the right is made by a person in Nigeria,
- (ii) the right is registered in Nigeria, assigned to or acquired by, a person in Nigeria, regardless of whether the payment for its exploitation is made within or outside Nigeria, or
- (iii) the incorporeal is connected with a tangible or immovable asset located in Nigeria.

2A. Time of supply

- (1) For the purposes of this Act, supply shall be deemed to take place at the time an invoice or receipt is issued by the supplier, or payment of consideration is due to, or received by the supplier in respect of that supply, whichever occurs first.

[2020 No. 1, s. 41]

- (2) A taxable supply shall be deemed to take place where the supplier and recipient are connected persons and invoices are not issued, in the case of-

- (a) a supply of goods which are to be removed, the time of removal of the goods;
- (b) a supply of goods which is not to be removed, at the time when they are available to the recipient;
- (c) furnishing of a service, upon the furnishing of the service; and
- (d) an incorporeal, when such incorporeal becomes available for the use of the recipient. [2020 No. 1, s. 41]

- (3) Notwithstanding the provisions of subsection (1) or (2)-

- (a) where goods are supplied under any rental agreement or where services are furnished under any agreement or law which provides for periodic payments, they shall be deemed to be successively supplied for successive parts of the periods of the agreement or as determined by such law, and each of the successive supplies shall be deemed to occur when payment becomes due or is received, whichever is earlier;
- (b) where, and to the extent that, supply of taxable goods and services are-
 - (i) progressively or periodically made under any agreement or law which provides for

the consideration for that supply to be paid in instalments or periodically and in relation to the progressive or periodic supply, or

- (ii) made in relation to any construction, erection, assembly, manufacturing, alteration, improvement or repair activity under any agreement or law which provides for the consideration for that supply to become due and payable in instalments or periodically in relation to the progressive nature of the work,

those supplies shall be deemed to be successively made, and each such successive supply shall be deemed to take place whenever any payment becomes due or is received or an invoice relating to only that payment is issued, whichever occurs first; and

- (c) where goods are supplied under an instalment credit agreement, that supply shall be deemed to take place at the time the goods are delivered or the time any payment of consideration is received by the supplier in respect of the supply, whichever occurs first.

[2020 No. 1, s. 41]

3. Goods and services exempt

There shall be exempt from the tax the goods and services listed in the First Schedule to this Act.
[1996 No.31 First Schedule.]

4. Rate of tax

The tax shall be computed at the rate of 7.5% with effect from 1 February 2020, on the value of all goods and services, except that goods and services listed under Part III of the First Schedule to this Act shall be taxed at zero rate

[2019 No. 1, s. 34; 2020 No. 1, s. 42]

5. Value of taxable goods and services

- (1) For the purpose of this Act, the value of taxable goods and services shall be determined as follows, that is:
 - (a) if the supply is for a money consideration, its value shall be deemed to be an amount which with the addition of the tax chargeable is equal to the consideration;
 - (b) if the supply is for a consideration not consisting of money the value of the supply shall be deemed to be its market value.
- (2) Where the supply of taxable goods or services is not the only matter to which a consideration in money relates, the supply shall be deemed to be such part of the consideration as is properly attributed to it.
- (3) For the purpose of this Act, the open market value of supply of taxable goods or services shall be taken to be the amount that would fall to be taken as its value under subsection (1) (b) of this section if the supply were for such consideration in money as could be payable by a person in a transaction at arm's length,

6. Value of imported goods

The value of imported taxable goods for the purposes of this Act shall be the amount which is equal to the price of the goods so imported and shall include:

- (a) all taxes, duties and other charges levied either outside or by reason of importation into Nigeria, other than the tax imposed by this Act;
- (b) all costs by way of commission, parking, transport and insurance up to the port or place of importation,

PART II *Administration*

7. Administration of the tax

- (1) The tax shall be administered and managed by the Federal Inland Revenue Service (in this Act referred to as "the Service ").
- (2) The Service may do such things as it may deem necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected in accordance with the provisions of this Act.
- (3) Where the Service is of the opinion that any disposition is not in fact given to or effect to or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, it may disregard any such disposition or direct that such adjustments shall be made as respects liability to tax as it considers appropriate so as to counteract the reduction of liability to tax affected, or reduction which would otherwise be affected, by transaction and any company concerned shall be assessable accordingly.
[2023 No.1, s.22]
- (4) For the purpose of this section "disposition" includes –
 - (a) Any trust, grant, covenant, scheme, agreement or arrangement; or
 - (b) Transactions between persons one of whom either has control over the other or, in the case of individuals, who are related to each other or between persons both of whom are controlled by some other person, shall be deemed to be artificial or fictitious if in the opinion of the Service or other relevant tax authority those transactions have not been made on terms which might fairly have been expected to have been made by persons engaged in the same or similar activities dealing with one another at arm's length.
- (5) A taxpayer in respect of which any direction is made under this section, shall have a right of appeal in like manner as though such direction were an assessment.

[2023 No. 1, s.22]

8. Registration and deregistration requirements

- (1) A taxable person shall upon commencement of business, register with the Service for the purpose of the tax.

[2019 No. 1, s. 35]

- (2) A taxable person who fails or refuses to register with the Service within the time specified in subsection (1) is liable to pay as penalty an amount of-

- (a) ₦50,000 in the first month in which the failure occurs; and

- (b) ₦25,000 for each subsequent month in which the failure continues.

[2019 No. 1, s. 35]

- (3) Where a taxable person permanently ceases to carry on a trade or business in Nigeria, the taxable person shall notify the Service of its intention to deregister for tax purpose within 90 days of such cessation of trade or business

[2019 No. 1, s.35]

9. Registration by Government Ministries, etc., as agents of the Service

- (1) Every Government Ministry, statutory body and other agency of Government shall register as agents of the Service for the purpose of collection of tax under this Act.

[1996 No. 31.]

- (2) Every contractor transacting business with a Government Ministry, statutory body and other agency of the Federal, State or local government shall produce evidence of registration with the Service as a condition for obtaining a contract.

[1996 No. 31.]

10. Registration by non-resident companies

- (1) For the purpose of this Act, a non-resident person that makes a taxable supply to Nigeria, shall register for tax with the Service and obtain Tax Identification Number.

[2021 No. 1, s. 30]

- (2) A non-resident person shall include the tax on its invoice for all taxable supplies.

[2021 No. 1, s. 30]

- (3) The taxable person to whom taxable supply is made in Nigeria, or such other person as may be appointed by the Service shall withhold or collect the tax, as the case may be, and remit same to the Service.

[2021 No. 1, s. 30]

- (4) Where a person appointed under subsection (3) has made a taxable person in Nigeria, the taxable person shall not have the obligation to withhold the tax, except where the person so appointed has failed to collect the tax.

[2021 No. 1, s. 30]

- (5) A non-resident person that makes a taxable supply to Nigeria may appoint a representative for

the purpose of compliance with its tax obligations.

[2021 No. 1, s. 30]

- (6) The Service may issue a guideline for the purpose of giving effect to the provisions of this section, including the form, time and procedure for filing returns and payment by non-resident suppliers appointed by the Service under subsection (3)

[2021 No. 1, s. 30]

11. Records and accounts

A person who is registered under section 8 of this Act (in this Act referred to as "a registered person") shall keep such records and books of all transactions, operations, imports and other activities relating to taxable goods and services as are sufficient to determine the correct amount of tax due under this Act.

PART III

Returns, remittances, recovery and refund of tax

12. Payment of tax by taxable person

- (1) A taxable person shall pay to the supplier the tax on taxable goods and services purchased by or supplied to the person.

[2007 No. 53, s. 4]

- (2) The tax paid by a taxable person under subsection (1) of this section shall be known as input tax.

13. Remission of tax collected by Government Ministries, etc

- (1) Every Ministry, statutory body or other agency of Government shall, at the time of making payment to a contractor, remit the tax charged on the contract to the nearest local Value Added Tax office.

[1996 No. 31]

- (2) The Service may, by notice, determine and direct the companies operating in the oil and gas sector which shall deduct VAT at source and remit same to the Service.

[2007 No. 53, s.5 (a)]

- (3) The remission shall be accompanied with a schedule showing the name and address of the contractor, invoice number, gross amount of invoice, amount of tax and month of return.

[1996 No. 31. Subsection (3), previously subsection (2), renumbered by 2007 No. 53, s. 5 (b)]

13A. Tax invoice

- (1) A taxable person who makes a taxable supply shall, in respect of that supply, furnish the purchaser with a tax invoice containing, *inter alia*, the following-

- (a) tax payers identification number;
 - (b) name and address;
 - (c) VAT registration number;
 - (d) the date of supply;
 - (e) name of purchaser or client;
 - (f) gross amount of transaction; and
 - (g) tax charged and rate supplied.
- (2) A tax invoice shall be issued on supply whether or not payment is made at the time of supply.

[2007 No. 53. s. 6]

14. Collection of tax by taxable person

- (1) A taxable person shall on supplying taxable goods or services to his accredited distributor, agent, client or consumer, as the case may be, collect the tax on those goods or services at the rate specified in section 2 of this Act.
- (2) The tax collected by a taxable person under subsection (1) of this section shall be known as output tax.
- (3) The Service may appoint any person to withhold or collect the tax, and the person so appointed shall, on or before the 14th day of the following month, remit the tax so withheld or collected to the Service in the currency of the transaction.
- (4) Where a person to whom taxable supplies is made in Nigeria is issued an invoice on which no tax is charged, such a person shall, self-account for the tax payable and remit the output tax to the Service within the timeline prescribed under section 15 of this Act.

[2021 No. 1, s. 31; 2023 No.1, s.23]

[2019 No. 1, s. 37]

15. Taxable person to render returns

- (1) A taxable person who, in the course of a business, has made taxable supplies or expects to make taxable supplies, the value of which, either singularly or cumulatively in any calendar year, is ₦25,000,000 or more shall, render to the Service, on or before the 21st day of every month in which this threshold is achieved and on or before the same day in successive months thereafter, a return of the input tax paid and output tax collected by him in the preceding month in such a manner as the Service may prescribe.
- (2) In determining whether a person meets the threshold in subsection (1), the value of the following taxable supplies shall be excluded-

[2019 No. 1, s. 38]

- (a) a taxable supply of a capital asset of the person; and
- (b) a taxable supply made solely as a consequence of the person selling the whole or a part of its business or permanently ceasing to carry on business:

Provided that any person that does not fall within the threshold in subsection (1) is exempt from the provisions of section 8(2), 13A, 29, 34 and 35 of this Act.

[2021 No. 1, s. 32]

(3) The exemption provided for in subsection (2), shall not apply to companies engaged in upstream petroleum operations as described in the Petroleum Industry Act and Petroleum Profits Tax Act.

[2021 No. 1,s.32]

16. Remission of tax

- (1) A taxable person shall, on rendering a return under section 15(1) of this Act-
 - (a) if the output tax collected exceeds the input tax paid, remit the excess to the Service;
 - (b) if the input tax paid exceeds the output tax collected, be entitled to utilise the excess tax as a credit against subsequent months:

Provided that the taxable person would be entitled to a refund from the Service, of excess tax not utilised as a credit, upon provision of such documents as the Service may require.

[2019 No. 1, s. 39]

- (2) An importer of taxable goods shall, before clearing those goods, pay to the Service the tax on those goods.
- (3) Where taxable goods imported into Nigeria were purchased through an online electronic or digital platform, operated by a non-resident supplier that has been appointed as agent of the Service for the collection of the tax, the importer shall at the point of clearing such goods, provide proof of such registration or appointment, and such other document as may be required by the Service, and such goods shall not be further subjected to the tax before clearing by the Nigeria Custom Service, pursuant to the necessary coordination on modalities between the Service and Nigerian Customs Service.

[2023 No.1, s.24]

17. Allowable input tax, etc.

- (1) For purposes of section 13 (1) of this Act, the input tax to be allowed as a deduction from output tax shall be limited to the tax on goods purchased or imported directly for resale and goods which form the stock-in-trade used for the direct production of any new product on which the output tax is charged.

[1998 No. 18.]

(2) Input tax-

- (a) on any overhead, service, and general administration of any business which otherwise can be expended through the income statement (profit and loss accounts); and

[1998 No. 18.]

- (b) on any capital item and asset which is to be capitalized along with cost of the capital item and asset,

shall not be allowed as a deduction from output tax.

18. Effect of failure to render returns

Where a taxable person fails to render returns or renders an incomplete or inaccurate returns, the Service shall assess, to the best of its judgement, the amount of tax due on the taxable goods and services purchased or supplied by the taxable person.

19. Effect of non-remittance of tax

- (1) If a taxable person does not remit the tax within the time specified in section 15 of this Act, a sum equal to 10 percent of the tax not remitted and interest at the prevailing Central Bank of Nigeria minimum re-discount rate, shall, be added to the tax not remitted and the provisions of this Act relating to collection and recovery of unremitted tax, penalty and interest shall apply.

[2019 No. 1, s. 40]

- (2) The Service shall notify the taxable person or his agent, of the tax due together with the penalty and interest and if payment is not made within 30 days of such notification, the Service may proceed to enforce payment as provided in section 15 of this Act.”

[2019 No. 1, s. 40]

20. Recovery of tax

- (1) Any tax, penalty or interest which remains unpaid after the period specified for payment may be recovered by the Service through proceedings in the Value Added Tax Tribunal.

[1996 No. 32.]

- (2) A taxable person who is aggrieved by an assessment made on the person may file an objection to the Federal Inland Revenue Service.

[1996 No. 32, 2007 No. 53, s. 10 (1).]

- (3) An appeal before the Federal Inland Revenue Service shall be determined within 30 days.

[1996 No. 32, 2007 No. 53, s. 10 (1).]

- (4) Appeal from the decisions of the Federal Inland Revenue Service shall be made to the Tax Appeal Tribunal.

[2007 No. 53, s. 10(2).]

- (5) An appeal from the Tax Appeal Tribunal shall be made to the Federal High Court.
[2007 No 53, s.10 (2).]

PART IV

Value Added Tax Technical Committee

[21 to 24 Deleted by 2019 No. 1, s 41]

PART V

Offences and penalties

25. Furnishing of false document, etc.

A person who-

- (a) produces, furnishes or sends for the purpose of this Act or otherwise makes use for that purpose of a document which is false in any material particular; or
[1996 No. 30.]
- (b) in furnishing an information to the Service, makes a statement which is false in any material particular,

is guilty of an offence and liable on conviction to a fine of twice the amount underdeclared.
[1996 No. 30.]

26. Evasion of tax

A person who-

- (a) participates in; or
[1996 No. 30]
- (b) takes steps with a view to make evasion of the tax by him or any other person, is guilty of an offence and liable on conviction to a fine of ₦30,000 or two times the amount of the tax being evaded, whichever is greater, or to imprisonment for a term not exceeding three years.

[1996 No. 30.]

27. Failure to make attribution

A person required to make an attribution, who-

- (a) fails to do so; or
[1996 No. 30.]

- (b) having done so, fails to notify the

Service, is liable to pay a penalty of ₦5,000.

[1996 No. 30.]

28. Failure to notify change of address

A taxable person who fails to notify the Service of any change of address within 30 days of such change, or who fails to comply with the requirement for notification of permanent cessation of trade or business under Section 8 of this Act, is liable to pay-

- (a) ₦50,000 for the first month in which the failure occurs; and
- (b) ₦25,000 for each subsequent month in which the failure continues.

[2019 No. 1, s. 42]

29. Failure to issue tax invoice

A person who fails to issue a tax invoice for goods sold or services rendered, is guilty of an offence and liable on conviction to a fine of 50% of the cost of the goods or services for which the invoice was not issued.

30. Resisting, etc., an authorised officer

A person who-

- (a) resists, hinders or obstructs or attempts to resist or hinder an authorised officer acting under section 39 of this Act; or
- (b) fails to comply fully with any requirement made under section 39 of this Act; or
- (c) makes any statement in response to a requirement made under section 5 of this Act which is false or incomplete; or

[1996 No. 30.]

- (d) procures or attempts to procure by any means any other person to act as aforesaid,

is guilty of an offence and liable on conviction to a fine of ₦10,000 or imprisonment for a term of six months or to both such fine and imprisonment.

31. Issuing of tax invoice by an unauthorised person

A person who, other than-

- (a) a person registered under this Act; or
- (b) a person authorised to do so under this Act,

issues an invoice purporting to be attributable to tax, is guilty of an offence and is liable on conviction to a fine of ₦10,000 or imprisonment for a term of six months.

32. [Deleted by 2019 No. 1, s. 43]

33. Failure to keep proper records and accounts

A taxable person who fails to keep records and accounts of his business transactions to allow for the correct ascertainment of tax and filing of returns is liable to pay a penalty of ₦2,000 for every month in which the failure continues.

34. Failure to collect tax

A taxable person who fails to collect tax under this Act, is liable to pay as penalty 150% of the amount not collected, plus 5% interest above the Central Bank of Nigeria rediscount rate.

35. Failure to submit returns

A taxable person who fails to submit returns to the Service, is liable to a fine of ₦50,000 in the month of default and ₦25,000 for every month in which the default continues.

[2019 No. 1, s. 44]

36. Aiding and abetting commission of offence, etc.

- (1) An officer of the Service or any other person who aids or abets the commission of any of the offences under this Act, is guilty of an offence and is liable on conviction to a fine of ₦50,000 or to imprisonment for a term of five years.
- (2) Where a person's conduct during any specified period has involved the commission or omission by him of anyone or more of the foregoing offences under this Act, then whether or not the particulars of the offences are known, he shall, by virtue of this section, be guilty of an offence and liable to pay a fine of ₦10,000 or four times the amount of any tax that was, or was intended to be evaded by his conduct, whichever is greater, or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

37. Offence by body corporate, etc.

Where an offence under this Act is committed by a body corporate or firm or other association of individuals-

- (a) every director, manager, secretary or other similar officer of the body corporate; or
- (b) every partner or officer of the firm; or
- (c) every person concerned in the management of the affairs of the association; or
- (d) every person who was purporting to act in any capacity as aforesaid,

is severally guilty of that offence and liable to be proceeded against and punished for the offence in like manner as if he had himself committed the offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

PART VI

Miscellaneous

38. Powers of Minister to vary Schedules

Minister may by order published in the *Gazette*-

- (a) amend the rate of tax chargeable; and
[First Schedule.]
- (b) amend, vary or modify the list set out in the First Schedule to this Act.
[1996 No.31]

39. Power of inspection

- (1) An authorised officer may at any time enter without warrant any premises upon which he has reasonable grounds to believe that a person is carrying on business in order to ascertain whether this Act is being complied with (whether on the part of the occupier of the premises or any other person), and on entry he may carry out such inspections and make such requirements as may be specified by the Service.
- (2) Where an authorised officer enters any premises in exercise of the power conferred on him by subsection (1) of this section, he may take with him such persons as he considers necessary for carrying out his functions under this Act.

40. Distribution of revenue

Notwithstanding any formula that may be prescribed by any other law, the revenue accruing by virtue of the operation of this Act shall be distributed as follows-

- (a) 15% to the Federal Government;
- (b) 50% to the State Governments and the Federal Capital Territory, Abuja; and
- (c) 35% to the Local Governments:

Provided that the principle of derivation of not less than 20% shall be reflected in the distribution of the allocation amongst States and Local Governments as specified in paragraphs (b) and (c) of this section.

[1999 No. 30, 2007 No. 53, s. 11]

41. Appointment of agent for manufacturer or importer

- (1) The Service may, by notice in writing, appoint any person to be the agent of any manufacturer or importer and the person so appointed shall be the agent of the manufacturer or importer for the purposes of this Act.
- (2) An agent may be required to pay any tax which is or may become payable by the manufacturer or importer from any money which may be held by him for, or due by or to become due by him to the manufacturer or importer, as the case may be, and in default of such payment, the tax shall be recoverable from him.
- (3) For the purpose of this section, the Service may require a person to give information as to any money, fund or other assets which may be held by him for, or of any money due from him to a manufacturer or an importer.

42. Business sold or transferred

Where a trade or business carried on by a company is sold or transferred to a Nigerian company for the purpose of better organisation of that trade or business or the transfer of its management to Nigeria, and any asset employed in such trade or business is sold or transferred, no tax shall apply under this Act to the sale or transfer of the assets to the extent that one company has control over the other or both are controlled by some other person or are members of a recognised group of companies and have been so for a consecutive period of at least 365 days prior to the date of reorganisation:

Provided that if the acquiring company were to make a subsequent disposal of the assets thereby acquired within the succeeding 365 days after the date of transaction, any concessions enjoyed under this subsection shall be rescinded and the companies shall be treated as if they did not qualify for the concessions stipulated in this subsection as at the date of initial reorganisation.

[2019 No. 1, s. 45]

43. Forms

The Service may, from time to time, specify the forms, statements and notices to be used under this Act.

44. Regulations

The Service may, with the approval of the Minister, make regulations for giving effect to the provisions of this Act.

45. Repeal

Subject to section 6 of the Interpretation Act, the Sales Tax Act is hereby repealed

[Cap. 123]

46. Interpretation

In this Act, unless the context otherwise requires-

“agency of Government” includes a Ministry, department, statutory body, public authority and an institution of the Federal, State and Local Government;

[1996 No.31, 1998 No. 18]

"animal feed" means raw, semi-processed, processed and otherwise enhanced animal feed that is fed to domesticated and other animals raised and slaughtered for human consumption to provide beef, goat, lamb, pork, chicken, fish and other kinds of meat, as well as other animals cultivated and raised for the production of milk, eggs as well as other sources of protein and nutrients edible by humans;

[2020 No. 1, s. 44]

“authorised officer” means an officer who has been authorised by the Service to perform any function under or in pursuance of this Act;

“basic food items” means agro and aqua based staple food described as-

additives i.e. honey whether raw or semi- processed,

bread (white and brown),

cereals e.g. maize, rice, wheat, millet, barley, sorghum, oats, fonio, finer millet and others of the same kind, however supplied in such form as grain, flour, crop, bulk or retail, raw or semi-processed,

cooking oils e.g. vegetable oil, soya oil, palm oil, groundnut oil, shea butter, benniseed oil, olive oil, coconut oil and others of the same kind:

Provided that they are of a type and grade suitable for culinary purposes and do not contain any substance such as perfume that will make them unsuitable for culinary use,

culinary herbs e.g. curry, thyme, onions, ginger, mint and others of the same kind, raw and unprocessed for human consumption,

fish of all kinds other than ornamental whether live, fresh, frozen, smoked or dried,

flour and starch e.g. corn flour, plantain flour, cassava flour, beans flour, wheat flour, rice flour, yam flour, garri and others of the same kind, bleached or unbleached, refined or unrefined provided that it is suitable for culinary purposes,

fruits e.g. pineapples, oranges, mangoes, guavas, grapes fruit, banana, pawpaw and others of the same kind, whether it is fresh or dried,

live or raw meat and poultry e.g. beef, goat, lamb, pork, chicken, and others of the same kind, whether live, butchered, complete, in parts, fresh, frozen, eggs and others of the same kind,

milk, whether fresh, liquid and powdered milk,

nuts e.g. groundnut, walnut, cashew nut, hazelnut, kolanut, tigernuts, coconut and others of the same kind, if raw and unprocessed for human consumption, also roasted, fried, boiled, salted or in their shells,

pulses e.g. beans, lentils, peas, chickpeas, tamarind and others of the same kind, if raw and unprocessed for human consumption, also roasted, fried, boiled, salted or in their shells,

roots e.g. yam, cocoyam, sweet and irish potatoes, water-yam, cassava and others of the same kind, in raw and unprocessed form, also, in form of flakes or flour for human consumption

salt for culinary use only including fine salt and in retail packs but excluding industrial salt,

vegetables e.g. pepper, melons, lettuce, okro, cabbage, carrots and others of the same kind, whether fresh, dried or ground,

water i.e. natural water and table water e.g. spring water, rain water, pipe borne water, well water and all-natural water of the same kind, all table water other than sparkling or flavoured water;

[2019 No. 1, s. 46.]

“building” means any house, including any garage, dwelling apartment, hospital and institutional building, factory, warehouse, theatre, cinema, store, mill building and similarly roofed structure affording protection and shelter, radio and television masts, transmission line, tower, vehicle and other similar structure but excludes mobile homes, caravans and trailers;

“business” includes any trade, commerce or manufacture or any concern in the nature of trade, commerce or manufacture;

“chairman” means the chairman of the Federal Inland Revenue Service;

“commencement of business”-

business shall be deemed to commence in Nigeria on the date that an entity carries out its first transaction which shall be the earliest of the date it-

- (a) begins to market or first advertises its products or services for sale;
- (b) obtains an operating licence from a regulatory authority in Nigeria;
- (c) first sale or purchase;
- (d) executes its first trading contract after incorporation;
- (e) issues or receives its first invoice;
- (f) delivers or receives its first consignment of goods; or
- (g) first renders services to its customers;

[2019 No. 1, s. 46.]

“commercial aircraft spare parts and components” means parts, engines, propellers, radio apparatus, instruments, appliances, furnishing, parts of any of the foregoing, and generally any other article of whatever description maintained for installation in a commercial aircraft in substitution for parts or articles removed;

[2020 No. 1, s. 44]

“company” means a company as defined under the Companies and Allied Matters Act and a

corporate body that may be formed under any other written law and includes any association, whether incorporated in or outside Nigeria;

[Cap. C20.]

“entertainment” includes any exhibition and performance in which admission of people is subject to payment by such persons but does not include the following, that is-

- (a) play on stage and performance which are carried out by educational institutions, approved by the Minister for the time being responsible for education as part of learning;
- (b) sport, game or other cultural performance conducted under the superintendence of the Ministry charged with the responsibility for culture and social welfare;
- (c) entertainment of a charitable, educational, medical, scientific or cultural nature as may be approved in writing by the Service prior to the date of the entertainment for the benefit of the public; and
- (d) entertainment organised by a non-profit making, charitable, educational, medical, scientific or cultural society registered under the law where the entertainment is in furtherance of the objectives of the society as may be approved in writing by the Service to the date of the entertainment;

“exported service” means a service rendered within or outside Nigeria by a person resident in Nigeria, to a non-resident outside Nigeria:

Provided that a service provided to the fixed base or permanent establishment of a non-resident person shall not qualify as exported services;

[2019 No. 1, s. 46.]

“goods” for the purposes of this Act, means all forms of tangible properties, movable or immovable, but does not include, land and building, money or securities;

[2020 No. 1, s. 44.]

“import” means bringing in or carrying to be brought in goods and services from another country or from an export processing zone;

“importer” means any person who imports taxable goods;

“input tax” has the meaning assigned to it in section 12 of this Act;

“invoice” means any document issued as an evidence of demand for payment;

“manufacturer” means any person who engages in the manufacture of goods and includes a person who has manufactured for him or on his behalf by others, goods made to his specification or design;

“manufacturing” means the process by which a commodity is finally produced, including assembling, bottling, repacking, mixing, blending, grinding, cutting, bending, twisting and joining or any other similar activity;

“Minister” means the Minister responsible for matters relating to Finance;

“motel” means premises on which accommodation, flats, service apartments, beach cottages, holiday cottages, game lodges are provided but excludes the following, that is-

- (a) premises run by a charitable or religious organisation registered under the relevant law for charitable or religious purposes;
- (b) premises operated by a medical institution approved by the Minister for the time being responsible for health for the use of the staff of that institution
- (c) premises whose supply is under a lease or licence of not less than one month, unless by prior arrangement, the occupier may without penalty, terminate that lease or licence on less than one month' s notice;

“output tax” has the meaning assigned to it in section 11 of this Act;

“owner” means in respect of any goods, aircraft, vessel, vehicle, plant or any other goods, a person, other than an officer acting officially, who holds out himself to be the owner, manufacturer, agent or the person in possession of or beneficially interested in, or having control of or power of disposition over the goods, aircraft, vessel, vehicle, plant or other goods;

“recognised group of companies” means a group of companies as prescribed under the relevant accounting standard;

[2019 No. 1, s. 46.]

“registered person” means any person registered under section 8 of the Act;

“restaurant” means any establishment carrying out the business of restaurant services, and includes cafeterias, fast-food outlets, snacks bars, food stalls at exhibitions or sports arenas and similar establishments but excludes-

- (a) an establishment operated for charitable or religious purposes;
- (b) an establishment run by an educational or training institution approved by the Minister for the use of the staff and students of those institutions; and
- (c) an establishment run by a medical institution approved by the Minister for the time being responsible for health for the use of the staff and students of the institution;

“restaurant service” means the supply of foods or beverages prepared for immediate consumption, whether or not such consumption is on the premises of the restaurant and including outside catering;

“Service” means the Federal Inland Revenue Service as defined in the Federal Inland Revenue Service (Establishment) Act, 2007;

[2019 No. 1, s. 46.]

“services” means-

- (a) anything, other than goods, or services provided under a contract of employment; and
- (b) includes any intangible or incorporeal (product, asset or property) over which a person has ownership or rights, or from which he derives benefits, and which can be transferred from one person to another, excluding interest in land and building, money or security;
[2020 No. 1, s. 44.]

“supplies” means any transaction, whether it is the sale of goods or the performances of a service for a consideration, that is, for money or money's worth;

“supply of goods” means any transaction where the whole property in the goods is transferred or where the agreement expressly contemplates that this will happen and in particular includes the sale and delivery of taxable goods or services used outside the business, the letting out of taxable goods on hire or leasing, and any disposal of taxable goods;

“supply of services” means any service provided for a consideration;

“tax” means the Value Added Tax imposed and charged under section 1 of this Act;

“tax period” means one calendar month commencing from the beginning of the month to the end of that month;

“taxable goods and services” means the goods and services not listed in the First Schedule to this Act;

[1996 No. 31]

“taxable person” includes an individual or body of individuals, family, corporations sole, trustee or executor or a person who carries out in a place an economic activity, a person exploiting tangible or intangible property for the purpose of obtaining income therefrom by way of trade or business or a person or agency of Government acting in that capacity;

[1996 No. 30, 1996 No. 31, 2007 No. 53, s. 12.]

“taxable supplies” means any transaction for sale of goods or the performances of a service, for a consideration in money or money's worth;

[2019 No. 1, s. 46.]

“transaction at arm's length” means a transaction on normal open market commercial terms;

“vehicle” includes for the purpose of this Act every description of conveyance for the transportation by land of human beings or goods;

“vessel” means a mode of transportation or conveyance by water of human beings or goods;

“wholesaler” means a person who obtains his stock predominantly from the manufacturers and sells in bulk to the retailers.

47. Short title

This Act may be cited as the Value Added Tax Act.

SCHEDULES

FIRST SCHEDULE

Goods and services exempt

[Sections 2 and 3]

[1996 No.31, 1998 No.18, 2007 No.53, s.13]

PART I

Goods exempt

1. All medical and pharmaceutical products.
2. Basic food items.
3. Books and educational materials.
[1998 No. 18]
4. Baby products.
5. Fertilizer, locally produced agricultural and veterinary medicine, farming machinery and farming transportation equipment.
6. All exports.
[1996 No. 31.]
7. Plant, machinery and goods imported for use in the export processing zone or free trade zone: Provided that 100 percent production of such company is for export otherwise tax shall accrue proportionately on the profits of the company.
[2007 No. 53, s. 13 (a).]
8. Plant, machinery and equipment purchased for utilisation of gas in down-stream petroleum operations.
9. Tractors, ploughs and agricultural equipment and implements purchased for agricultural purposes.
10. Locally manufactured sanitary towels, pads or tampons.

[2019 No. 1, s. 47.]

11. Commercial aircrafts, commercial aircraft engines, commercial aircraft spare parts.
[2020 No. 1, s. 45]

PART II

Services exempt

1. Medical services.
2. Services rendered by microfinance banks, people's banks and mortgage Institutions. [2019 No. 1, s. 47.]
3. Plays and performances conducted by educational institutions as part of learning.
4. All exported services.
[1996 No. 31.]
5. Tuition relating to nursery, primary, secondary and tertiary education.
[2019 No. 1, s. 47.]
6. Airline transportation tickets issued and sold by commercial airlines registered in Nigeria.
[2020 No. 1, s. 45.]
7. Hire, rental or lease of tractors, ploughs and other agricultural equipment for agricultural purposes.
[2020 No. 1, s. 45.]

PART III

Zero-rated goods and services

[2007 No. 53, s.13 (b).]

1. Non-oil exports.
2. Goods and services purchased by diplomats.
3. Goods purchased for use in humanitarian donor funded projects.

“humanitarian donor funded projects” includes projects undertaken by Non-Governmental Organisations and religious and social clubs or societies recognised by law whose activity is not for profit and in the public interest.

CHAPTER V2

VENTURE CAPITAL (INCENTIVES) ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Qualification and participation in the National Risk Fund.
2. Venture projects.
3. Qualifying investment by a venture capital company.
4. Qualifying venture incentives.
5. Accreditation of a venture project company, etc.
6. Interpretation.
7. Short title.

CHAPTER V2

VENTURE CAPITAL (INCENTIVES) ACT

An Act to provide for the grant of tax relief and other incentives on personal investments in the National Risk Fund, venture capital companies and venture capital projects and other matters related thereto.

[1993 No. 89.]

[Commencement.]

[25th August, 1993]

1. Qualification and participation in the National Risk Fund

(1) For the purposes of this Act, a venture capital company shall qualify as an investor under the National Risk Fund (in this Act referred to as “the Risk Fund”).

(2) For the purposes of this Act, a venture investment shall-

(a) be an investment in a venture capital company; and

(b) qualify for the incentives granted under this Act.

[1999 No. 45.]

2. Venture projects

For the purposes of the incentives specified in this Act, the Federal Inland Revenue Service shall certify that a venture capital project fulfils or is capable of fulfilling one or more of the objectives set out in this Act, that is-

(a) the acceleration of industrialisation by nurturing innovative ideas, projects and techniques to fruition; or

(b) the commercialisation of research findings with high potential for far reaching forward or backward linkages; or

(c) the promotion of self-reliance through the establishment of resource based and strategic industries through the provision of risk guarantee and insurance; or

(d) the encouragement of indigenous processes and technologies; or

(e) the promotion of the growth of small and medium scale enterprises with emphasis on local raw materials development and utilisation; or

(f) such other objectives as may, from time to time, be specified by the Federal Inland Revenue Service.

3. Qualifying investment by a venture capital company

For a venture capital company to qualify for the incentives specified in section 4 of this Act its investment in the venture project shall not be less than 25 per cent of the total capital required for the venture project.

4. Qualifying venture incentives

The following shall accrue to venture investments-

- (a) an equity investment by a venture capital company in a venture project company shall, for the purposes of capital allowance under the Companies Income Tax Act, be treated as follows-

[Cap. C21.]

- (i) for the first year deduct 30 per cent;
 - (ii) for the second year deduct 30 per cent;
 - (iii) for the third year deduct 20 per cent;
 - (iv) for the fourth year deduct 10 per cent;
 - (v) for the fifth year deduct 10 per cent;
- (b) the amount of capital gains accruing to a venture capital company from a disposal of its equity interest in a venture project company shall be exempted from capital gains tax as follows:
 - (i) for the disposal of capital within five years of investment, 100 per cent;
 - (ii) for the disposal of capital between six and ten years of investment, 75 per cent;
 - (iii) for the disposal of capital between eleven and fifteen years of investment, 25 per cent;
 - (iv) for the disposal of capital after fifteen years of investment, 0 per cent;
- (c) the withholding tax payable on dividend declared by the Federal Inland Revenue Service in a venture project company shall be reduced by 50 per cent of the prevailing rate of withholding tax in respect of dividend received by a participant in the Risk Fund and venture project company within the first five years;
- (d) the provisions of the Industrial Development (Income Tax Relief) Act, shall apply to a venture project company; and

[Cap. I7.]

- (e) the provisions of the Export (Incentives and Miscellaneous Provisions) Act shall apply to a venture project company to the extent of the involvement of the venture project company in the exportation of its products.

[Cap. E19]

5. Accreditation of a venture project company, etc.

- (1) The Federal Inland Revenue Service shall, from time to time, determine for purposes of this Act, a person as a venture capital company or venture project company.
- (2) In furtherance of the provisions of subsection (1) of this section, the decision of the Federal Inland Revenue Service shall be based on the realisation of one or more of the objectives set out in section 2 of this Act.
- (3) Investments in duly accredited venture capital companies shall qualify as security in which trustees may invest, accordingly the provisions of the Trustee Investments Act shall apply *mutatis mutandis* to such venture capital investments.

[Cap. T22.]

6. Interpretation

In this Act, unless the context otherwise requires-

“**body corporate**” includes a venture company;

“**Federal Inland Revenue Service**” means the Federal Inland Revenue Service;

“**participant**” means a body corporate or individual who is an equity investor in a Risk Fund or venture investment;

“**venture capital company**” means a body corporate incorporated for the purposes of one or more of the objectives set out in section 2 of this Act;

“**venture project company**” means a body corporate established for the realisation of one more of the objectives set out in section 2 of this Act;

“**venture project**” means a project in the commercialisation of an innovative idea and process and includes capital expenditure in the development of a local resource base.

7. Short title

This Act may be cited as the Venture Capital (Incentives) Act.